# ¶ The Dialoges

*in Englisſh, betwene a*
Doctor of Diuinity, and
a Student
in the lawes of England.
Newly corrected and
imprinted, with
new additi-
ons.

¶ Cum priuilegio ad impri-
mendum ſolum.

# The Dialogs

In English, Latin, &
Dutch of Divinity, and
of Diuers
in the Island of England.
Newly corrected and
diligently, & truly
new printed.

Cum priuilegio ad imprimendum solum.

# ¶ Hereafter followeth the first Dialogue in Englishe, betwixt a *Doctor of Diuinity, and a Student in the lawes of* England, of the grounde of the laude lawes, and of conscience, newly corrected, and diuerses imprinted with new additions.

## ¶ The Introduction.

A Doctour of diuinity that was of great acquaintace and familiarity with a Student in the lawes of England, layd thus vnto him, I haue had great desire of longe tyme to knowe whereuppon the law of England is grounded, but because the most part of the lawe of Englande is written in the Frenche tongue: therefore I cannot through mine owne study attaine to y knowledge therof: for in y tongue I am nothinge expert. And because I haue alwaies founde thee a faithful friende to me in all my businesse: therefore I am bolde to come to thee before any other to know thy minde, what bee the very grounds of the lawes of England as thou thinkest. Student. That wouldest thou haue a great leasure, and it is also about my cunning to do it. Neuertheles, that thou shalt not thinke that I would craftily refuse to fulfil thy desire: I shall with god will doe



603,077.

that in me is to ſatiſfy thy minde: but I pray thee that thou wilt firſt ſhewe me ſome what of other lawes that pertaine moſt to this matter: and that Doctours treat of, howe lawes haue begunne. And then I will gladly ſhewe thee as me thinketh ſoberly be the grounde of the lawe of Englande. M. I will with good will dooe as thou ſayeſt: wherefore thou ſhalt vnderſtād that doctours treat of fower lawes, the which (as me ſemath) pertaine moſt to this matter. The firſt is the lawe eternall. The ſeconde is the lawe of nature of reaſonable creatures, the which as I haue heard ſay, is called by them that be learned in the lawe of England, the lawe of reaſon. The third is the lawe of God. The fourth is the lawe of man. And therefore I will firſt treate of the lawe eternall.

## Of the lawe eternall.

### The firſt Chapter.

LIke as there is in euery artificer a reaſon of ſuch thinges as are to be made by his craft: ſo likewiſe it behoueth that in euery gouernour there bee reaſon and a foreſight, in the gouerning of ſuch thinges as ſhalbe ſubiect & bowe by him, to them that he hath the gouernaūce of. And forasmuch as almighty god is the creatour & maker of all creatures, to the which he is compared as a workman to his workes: And is alſo to the gouernour of all deedes & mouinges that be foūde in any creature: Therefore as the reaſon of the wilbowne of God (in almuch as creatures be created by him) as the reaſon & foreſight of artificers and workers that haue beene

or shal be, so the reason of the wisdom of God moving all things by wisedõe made to a good ende, obtaineth the name & reason of a lawe, & that is called the lawe eternall.

And this lawe eternal is called the first lawe, & it is well called the first, for it was before all other lawes, & al other lawes be derived of it, wherevpon saint Augustine sayeth in his first booke of free arbitrement, that in temporall lawes, nothing is righteous nor lawfull, but that the people haue derived to thẽ out of the lawe eternal, wherefore euery man hath right & title to haue that he hath righteously, of the right wise iudgement of the first reason, which is the lawe eternal. Q. But how may this lawe eternal be knowen: for as the Apostle writeth in the .ij. Chapiter of his first Epistle to the Corinthians. Quæ sunt dei nemo scit, nisi spiritus dei. That is to say, no man knoweth what is in God, but the spirit of God, wherefore it seemeth that he openeth his mouth into heauen, that attempteth to know it. D. This lawe eternal no mã may knowe as it is in it self, but onely blessed soules that see God face to face: But almighty God of his goodnes sheweth of it almuch to his creatures as is necessary for thẽ, for els God shoulde bind his creatures to a thing impossible: which may in no wise be thought in hi. Therefore it is to be vnderstãd that .3. maner wais almighty god maketh this lawe eternal knowẽ to his creatures reasonable First, by the light of natural reasõ. Secõd, by heauenly reuelation. Thirdly, by the order of a

Prince or any other secondary governor that hath power to bind his subiects to a law. And when the law eternal or the will of God is knowen to his creatures reasonable by the light of natural vnderstanding, or by the light of natural reason, then it is called the lawe of reason. And when it is shewed by heauenly reuelation in such manner as hereafter shal appeare, then it is called the lawe of God. And when it is shewed vnto him by the order of a Prince or of any other secondary gouernour that hath a power to set a law vpon his subiects, tho it is called the law of mā, though originally it be made of God. For lawes made by man that hath receyued thereto power of God, be made by God. Therfore the said three lawes that is to say, the law of reaō, the law of God, & the law of man, the which haue seueral names after the maner as they be shewed to man, be called in God, one law eternal.

And thus is the lawe of whō it is written, Proverbiorum octauo, where it is said, Per me reges regnant, & legum conditores iusta discernunt. That is to say, by me kings raigne, & makers of lawes discerne the trouth. And this sufficeth for this time of the law eternal.

## Of the lawe of reason, the which by doctours is called the lawe of nature of reasonable creatures.

## The ij. Chapiter.

FIrst it is to be vnderstande, that the lawe of nature may be considered in two manners, that is to say: generally & specially. When it is considered generally, then it is referred to al creatures, alwel reasonable as vnreasonable, for al vnreasonable creatures be vnder a certaine rule to the geuen by nature necessary for them to the conseruation of their being, but of this lawe it is not our entent to treat at this time. The lawe of nature specyally considered: which is also called the lawe of reason, perteineth onely to creatures reasonable, that is man, which is created to the ymage of God.

And this lawe ought to be kept as wel amonge Iewes, and Gentyles, as amonge Christian men. And this law is alway good and righteous, stirring and enclyninge a man to good, and abhorring euill: and as to the ordering of the deedes of man it is preferred before the law of God. And it is written in the hart of euery man teaching him what is to be done & what is to be fled. And because it is written in the hart, therfore it may not be put away, ne it is neuer chaungeable by no diuersitie of place ne time. And therefore agaynst thys lawe, prescripcyon, statute, nor customs, may not preuayle. And if any be brought in agaynst it, they bee no prescripcyons, statutes nor Customes, but thinges voyde and againste Iustice. And all other lawes, as well the lawes of GOD as to the acts of men, as other be grounded thereupon.

S. Saith the lawe of reason is written in the hart of every man, he shall haue lesse reason him what is to be done, & what is to be fled, & the whiche reason shall neuer passe be put out of the hart. But ouer that is there any other lawe wholsome to rule the actes and deedes of the people. D. Though the lawes of reason may not be chaunged nor wholy put away, nerthelesse before the lawe written, it was greatly lefte blinded by euel customes & by many errors of the people, before the originall time: in so much that it might hardely be discerned what was righteousnes, what was vnrighteousnes, & what was good and what euil. Wherefore it is necessary for the good order of the people, to haue many things added to the lawe of reason, as well by the Churche as by seculer Princes, according to the maners of the countrey & of the people, where such additions shoulde be exercised. And this lawe of reason differeth from the lawe of God in two maners. For the lawe of God is geuen by reuelation of God, & this lawe is geuen by a natural light of vnderstanding. And also the lawe of god ordereth a man of it self by a nigh way to the felicity that euer shal endure. And the lawe of reason ordereth a man to the felicity of this life. S. But what be the thinges that the lawe of reason teacheth to be done, and what to be fled: I pray thee shew me. D. The lawe of reason teacheth that good is to be loued, and euil is to be fled. Also that thou shalt doe to another, that thou wouldest an other shoulde doe to thee. And that we may doe

nothing

nothing against truth. And that a man must liue peacefully with other. That Iustice is to be done to euery man, and also that wrong is not to be done to any mā. And also a trespasser is worthye to be punished and such other, of the which follow diuers other secondary commaundements, the which be as necessary conclusions deriued of the first, as of that commaundement that god is to be beloued, it followeth that a man shall loue his benefactour, for a benefactour in that he is a benefactour, includeth in him a reason of godnesse, for els he ought not to be called a benefactour, that is to say, a good doer but an euil doer. And so in that he is a benefactor, he is to be beloued in al times, & in al places. And this lawe also suffereth many things to be done, as that it is lawful to put away force with force. And that it is lawful for euery man to defend himselfe & his goods against an vnlawful power. And this lawe runneth with euery mans law, and also with the lawe of God, as to the dedes of man, and must be alwayes kept and obserued, and shal alwaye declare what ought to follow vppon the general rules of the lawe of man, and shall reuoque them if they be in any thing contrary vnto it. And here is to be vnderstande, that after lawe men the lawe whereby al thinges were in common, was neuer of the lawe of reason, but onely in the time of extreme necessity. For they say that the lawe of reason may not be chaunged, but they say it is euident that the lawe whereby al things should be in common is chaunged, wherefore

fore they conclude that was neuer the lawe of reason.

## ¶ Of the lawe of God.

### ¶ The iij. Chapiter.

The lawe of God is a certeine lawe geuen by reuelation to a reasonable creature shewing him the will of God, willing that creatures reasonable be bounde to doe a thinge or not to doe it, for obtaining of the felicity eternal. And it is said for the obtaining of the felicity eternal, to exclude the lawes shewed by reuelation of God for the political rule of the people, the which be called Judicials. For a lawe is not properly called the lawe of God because it was shewed by reuelation of God, but also because it directeth a man by the nearest way to the felicity eternal, as beene the lawes of the olde Testament that beene called Morralles, and the lawes of the Euangelistes, the which were shewed in much more excellent manner, then the lawe of the olde Testament was: for that was shewed by the mediation of an Angell. But the lawe of the Euangelistes was shewed by the mediation of our Lord Jesu Christ God and man, & the lawe of god is alway righteous & iust, for it is made and geuen after the will of god. And therefore al acts & dedes of mā, be called righteous and iust when they be done according to the lawe of god & be conformable to it. Also sometime a

lawe

made by man is called the lawe of God. As when a law taketh his principall ground vpon the law of god, & is made for the declaration or conseruation of the faith, and to put away hereſies, as diuers lawes Canons, & also diuers lawes made by the cõmon people sometime doe. The which therefore are rather to be called the lawe of God then the law of man. Yet neuertheleſſe, al the lawes Canon be not the lawes of god. For many of them bee made onely for the political rule and conseruation of the people, whereuppon Iohn Gerſon in the treatice of the spirituall life of the ſoule, the ſecond Leſſon, & the third Corollary, ſaith thus. Al the Canons of Bysshops nor their decrees be not the lawe of god. For many of them bee made onely for the polyticall conuerſation of the people. And if any man will ſay: We not all the goods of the church ſpirituall: for they belong vnto the ſpiritualty & leade to the ſpirytualty: We aunſwere: That in the whole politicall conuerſatiõ of the people, there be ſome ſpecially deputed & dedicate to the ſeruice of God, the which moſt ſpecially (as by an excellency) are called ſpirituall men as religious mẽ are. And other though they walke in the way of God, yet neuertheleſſe, becauſe their office is moſt ſpecially to bee occupyed about ſuch thynges as pertayne to the common wealth, and to the good ordre of the people, they be therefore called ſeruiles mennę or laye men. Neuertheleſſe, the goodes of the firſte may no more be called ſpirituall,

then

then the goodes of the other, for they be thinges mere temporall & keping the body as they doe in the other. And by lyke reason, lawes made for the politicall order of the Church, be called many times spirituall or the lawes of God. Neuerthelesse, it is but improperly. And whether be called ciuill or the lawe of man. And in this point many be oft times deceiued, & also deceiue other, the which iudge the thinges to be spirituall, the which all men know be thinges material and carnall. Thus be the wordes of Iohn Gerson in the place alleaged before. Furthermore, besides the lawe of reason & the lawe of man, it was necessary to haue the lawe of God for seuen reasons. The first because man is ordeyned to the end of the eternal felicity the which exceedeth the proportion & facultie of mans power: Wherefore it was necessary that besides the lawe of reason and the lawe of man he shoulde be directed to his ende by a lawe made of God. Secondly, forasmuch as for the vncertainty of mans iudgement, specially of thinges peculier and to come fallinge, it happeneth oft times to folowe diuers iudgements of diuers men, and diuersities of lawes, and therefore to the entent that a man without any doubt may knowe what he should do and what he shoulde not doe, it was necessary that he shoulde be directed in al his deedes by a lawe heuenly geuen by God, for which is so apparant that no man may gaynsay it, as is the lawe of God. Thirdly, man may onely make a lawe of such thinges as he may iudge

judge vpon, and the iudgement of man may not be of inward things, but only of outward things, and nevertheless it belongeth to perfection that a man be well ordered in both, that is to say, aswel inward as outward. Therfore it was necessary to haue the lawe of God, the which should order a man aswel of inward things as of outward things. The fourth is, because as saynte Augustine saith in the firste booke of free arbitrement, the lawe of man may not punish all offences: for if all offences should bee punished, the common wealth should be hurt as is of couetousnes. For by it cannot be auoyded, but that as long as couetous be riches, many offences shal follow thereby, yet they be suffered for the common profite. And therefore that no euil should be vnpunished, it was necessary to haue the lawe of God, that should punish no euil vnpunished.

## Of the lawe of man.

The lawe of man the which doctrine is called the lawe positiue, is deuided by reason as a thing which is necessarily conuenient vnto the ordering of the state of reason, one of the lawe of God. And that is called positiue, that appeareth to many, and especially to wise men, to be right, and conuenient in euery lawe positiue, that maketh some point of the lawe of reason, and of the lawe of God, and to determine the doom of the lawe of reason from the lawe positiue, is very hard. And though it bee hard, yet it is much

much necessary in euery morall doctrine, and is in all lawes made for the comon wealth. And that the lawe of man bee iust & righteouse, two thinges be necessary, that is to say, wisdome & aucthority. Wisdome, that hee may iudge after reason what is to be done for the communalty, and what is expedient for a peaceable conuersation, & necessary iustefication of them. Auctho-rity, that hee haue auctority to make lawes. For the lawe is named of Ligare: that is to say, to binde. But the sentence of a wise man doth not bynd the comunalty, if he haue no rule ouer them. Also to euery good lawe be required thole inquiries, that is to say, that it be honest, right-wise, possible in it sete, and after the custom of the countrey, conuenient for the place and time, necessary, profitable, & also manifest, that it bee not captious, by any darke sentence, ne vnyte with any priuate wealthe, but all made for the cõmon wealth. And after saint Bridget, in the fourth booke in the Cxvii. Chapiter, euerye good law is ordeined to the health of the soule, and to the fulfilling of the lawes of God: and to enduce the people to flye euyll desires, and to doe good workes. Also as the Cardinall of Cameter writeth: whatsoeuer is righteous in the lawe of man, is righteous in the lawe of God, for euery mans lawe must bee conformant to the lawe of God. And therefore the lawes of princes, the commaundementes of prelates, the learninges of comunalties, ne yet the ordi-naunce of euery parish is not right good and ho-nourey, but if it be soulonge to the law of God.

And

And of such a lawe of man that is consonant to the lawe of god, it appeareth who hath right to lands and goods, and who not: for whatsoeuer a man hath by such lawes of man, he hath rightfully. And whatsoeuer is had against such lawes, is vnrighteously had.

For lawes of man not contrary to the lawe of God, nor to the lawe of reason, must be obserued in the law of the soule: and he that defileth them, defileth God, and reuileth god. And furthermore as Gracian saith, because euil men feare to offend for feare of paine. Therefore it was necessary that diuers paynes should be ordeined for diuers offences, as Physitions ordeine diuers remedies for seuerall diseases. And such paines be obtained by the makers of lawes after the necessity of the time, and after the disposition of the people. And though that lawe that ordeined such paines hath thereby a conformity to the law of God (for the lawe of GOD commaundeth that the people shal take away euill from amonge them selues) yet they belonge not so much to the lawe of GOD, but that other paines standinge the first principles might be ordeined and appointed, therefore that is the lawe that is called most properly the law positiue, and the lawe of man.

And the Philosopher saith in the third booke of his Ethikes, that the entent of a maker of a lawe is to make the people good, & to bring them to vertue. And though some [illegible] what in a general disposed thereupon the lawe

lawe of England is grounded. Yea but neuertheles it muste be grounded of the lawe Lawes, that is to say of the lawe eternal, of the lawe of reason, and of the lawe of God. I truste these. I praye thee therefore me hope specially, wherevpon it is grounded as thou thinkest, as thou beleeuest, yat promised to me.

D. I will with good will. All the reason that lieth in me, for yat I haue promised, I will plaine and liberally shewe vnto you. First therefore thou shalt vnderstand, yat the lawe of England is grounded vpon fiue principall groundes. First it is grounded on the lawe of reason. Secondly on the lawe of God. Thirdly, on diuers generall customes of the Realme. Fourthly, on diuers speciall lawes that be called Statutes. Fiftly, on diuers particuler customes. Sixtly, on diuers pointes made in Parliamentes, by the king and by the commen counsell of the realme. Of whych groundes I shall declare vnto you, as they be recorded before, and first of the lawe of reason.

## C. Of the first ground of the lawe of England.

### The. v. Chapter.

The first ground of the lawe of England is the lawe of reason, whereof more shall be sayde before in the seuenth chapter, for which is meant by the lawe of reason, and by diuers names hath it diuersely been called, as before hath been touched, but I will here vse those names that I haue before. D. But I would knowe what is called the lawe of Nature after the lawes of England,

England. S. It is not vsed among them that be learned in the lawes of England to reason what thinge is commaunded or prohibited by the law of nature, & what not, but al the reasoning in that behalf is vnder this maner, as whe any thinge is grounded vpon the law of nature, they say that reason will that such a thinge bee done & if it be prohibited by the law of nature, they say it is against reason or that reason will not suffer that it be done. D. Then I pray thee shewe mee so what they that bee learned in the lawes of the realme hold to be commaunded or prohibited by the lawe of nature, vnder such termes & after such maner as is vsed amongest them that bee learned in the said lawes.

S. Mary be it by them that be learned in the lawes of England two degrees of the lawe of reason, that is to say, the law of reason primary, & the law of reason, secondary, by the law of reason primary bee prohibited in the lawes of England murder, that is the death of him that is innocent, periury, diuorce, breakinge of the peace, & many other like. Also by the same law also it is lawful for a man to defend himselfe against an vniust power to bee done vnto him. And also if any promise bee made by me as to the body it is by the law of reason holde in the lawes of England. The other is called the law of secundary reason, the which is deuided into two brounches, that is to say, into the lawes of secundary reason generall & into the lawes of secundary reason particuler. The law of secundary reason generall is grounded and deryued of the generall lawe, or generall

cultome of property, whereby goods moueable & vnmoueable be brought into a certayn property so that euery man may know his owne thing. And by this braunch be prohibited in ꝑ lawes of England diuersons, trespasse in Landes and goods, reteulle, theft, vnlawful withholding of an other mans goods & such other. And by the same lawe it is a ground in the lawe of England that satisfaction must bee made for a trespasse, and that restitucio must be made of such goods as one man hath that belong to an other man, the debts must be paid, couenants fulfilled, and such other. And because diuersons, trespasse in landes and goods, theft, and such other had not bene knowen, if the lawe of property had not bene ordeined. Therefore all thinges that be derined by reason out of the sayd lawe of property be called the lawe of reason lecundary general, for the lawe of property is generally kept in al our countries. The lawe of reason lecundary perticuler, is ꝑ lawe that is derined vppon diuers cultomes generall and particuler, and of diuers statutes and statutes ordeined in this realme. And it is called ꝑ lawe of reason lecundary particuler, because the reason in ꝑ case is derined of such a lawe ꝑ is only holden for lawe in this realme, and in none other realme.

## Addition.

Q. I pray thee shew me the special case of such lawe of reason lecundary particuler for an example. A. There is a lawe in England, which is a lawe of cultom ꝑ if a man take a distrelle lawfully, that he shal put it in a pounde ouert, there is

to remaine till he be satisfied of ỹ hee distrained
for. And thē hereupon may be asked this que-
stion, that if the beastes die in poūde for lacke of
meate, whose peril die they, whether die they
at the peril of him ỹ distrained, or of him that
oweth the beastes? D. If the lawe beeras thou
sayest, yet hath a man for a iust cause, taketh a di-
strese, putteth it in the poūde, and the
lawe compelleth him that distraineth to finde
them meate, then it seemeth vnreason that if the
distrese die in the poūde for lacke of meate, it dies
at the peril of him that oweth the beastes, & not
of him ỹ distrained, for in him that distreined
there can be alleged no default, but in the other
may be alleged a default, because the rent was
vnpayde. S. Thou hast geuen a true iudge-
ment, and who hath taught thee to doe so, but
reason vertued of the said general rule? And
the lawe is so full of such secondary reasons de-
riued out of the general customes and maximes
of the realme, that some wil haue affirmed that
all the lawe of the realme, is the lawe of reason,
but it cannot be proued as me seemeth, and I haue
partly shewed before more fully with the fore-
after. And to vnderstand the lawes of
England, to reason why the lawe is grounded
vpon the lawe of the first reason primary, or
of the lawe of reason secondary, for they doe
muche commonly openly in both of them selues
but for the knowledge of the lawe of reason se-
condary is greater difficultie, therfore therein
is deprehended much the more fond fortune of an
vnlearned in the lawes of England

Note it is to be noted that all the derining of reason in the lawes of England procedeth of the first principals of the lawe of kinde, thing that is derined of them. And therefore no man may right iustely iudge or prouinely reason in the lawes of England, if he be ignorant in the first principals. Also all birdes, foules, beastes of forestes and warren, & such of him be excepted by the lawes of England be part of the said generall lawes & statutes of property. & so by the lawes of the realme no property may be of the in any person, unlesse they be tame. Nevertheless the egges of hawkes, herons, & such other birdes or buirde in the ground of any person be auaunged by the lay lawes to belong to him that oweth the ground.

## Of the second ground of the lawe of England

The seconde grounde of the lawes of England is the lawe of God, & therfore for punishment of them that offende against the lawe of God, it is enquired in many courtes in this realme, if any hold any opinions contrary to holy scripture or any other manner against the true catholike faith. And also if any generall custome were directly against the lawe of god, or if any statute were made directly against it, as if there were vide that no almes should be geuen by no necessity, the custome & statute were voide. Nevertheless it is ordeined & made in the xxiij. yere of king Edward the iij. forasmuch by it is ordeined that no manner paine of imprisonment shal gene any almesse to any valiant beg-

beggers that may wel labour, that they may
so be compelled to labour for their living, is a
good statute, for it sheweth the entent of the
laws of God. And also by auctoritie of this
law there is a ground in the lawes of Eng-
land, that he that is accused that maintain no
action in the Kings court, except it be in petit
seruice, so that the same cream incation be
certified before the Kings Justices in such man-
ner as the law of the Realme hath appointed.
And by the auctoritie also of this groud, the
lawe of England admitteth the spirituall iuris
diction of bishops & officials. And of all other
things that of right belong vnto it. And refe-
reth also to lawes of the church duly made,
that exceed not the compasse of the that made the
Parliament. In many cases is permitted the Kings
Justices to iudge after the lawes of the church
As how may that be, that the Kings Justices
shall iudge in the Kings court after the lawes
of the church, for it seemeth that the Church
should rather give iudgement in such things as
it may make lawes of, that the Kings Justices.
So. That may be done in many cases wherein
shall for an example put this case. If a writ of
right of ward be brought of the body of a
the tenant defending the demaunde, the demaunde
the infant saith that the land was granted in
his ancestors warrantie, wherevpon the tenant
may be compelled to aunswere vnto that point, that the land
was granted in the life of his ancestour. And
that the warrant in the life of his ancestour
died before whereby your sentence was geuen
that they should be deuorced. And that the

Mod. L. 134.

before appeled, which hangeth yet undiscussed
praying the aide of the iustice to know whe-
ther the mean in this case shalbe lad married or
no. In this case of the lawe of the church be y
the said sentence of divorce standeth in his
strength & vertue vntil it be annulled vpō the
said appele. That the infant at the death of his
ancestour was vnmarried because the first ma-
riage was annulled by y divorce. And if the
lawe of the church be that the sentence of the di-
vorce standeth not in effect til it be affirmed by
non the said appele, then is the infant yet ma-
ried, so that the value of this mariage cannot
belong vnto the lord. And therfore in this case
iudgement ought not yet shalbe geue &c. And in
likewyse the kinges Iustices in many other
cases shal iudge after the lawe of the church
like as y spirituall iudges must in many cases
frame their iudgement after the kinges lawes.
Now may that be, that the spirituall iud-
ges should iudge after y kings lawes. I pray
the shewe me some certaine case therof. Sr.
though it be long, what a digression from our
first purpose, yet I will not withstay thy de-
sire, but will with good will put the a case by
two thereof, y thou maist the better perceyue
what I meane. If A. & B. haue goods iointly
and A. by his last will bequethe his portyon
therein to C. & maketh the said B. his execu-
tor & dyeth, & C. alleged the execution of this
will in the spirituall court: In this case y iud-
ges there be bounde to iudge that will to be
void because it is void by y lawes of y realme.
And in likewyse if a man be outlawed, & after

by

by his wil bequeth certaine goods to John at Stile, & make his executors & die, ꝑ king seyseth the goods & after geueth them again to ꝑ executors, & after John at Stile sueth a citation out of the spiritual court against the executors, to haue execution of ꝑ wil, in this case the iudges of the spiritual court must iudge ꝑ wil to be void, as the law of the realme is that it is. And yet there is no such lawe of forfayture of goods by outlary in ꝑ spiritual law.

## ¶ Of the thirde ground of the law of England. The vij. Chapiter.

The third ground of the lawe of Englande standeth vppon diuers generall customes of old time vsed through al ꝑ realme, which haue bene accepted & approued by our Soueraigne lord ꝑ king & his progenitours, & al their subiectes. And because the said customes be neyther against ꝑ law of god, nor the law of reason, & haue bene alway taken to be good & necessary for the cõmon wealth of al the realme: Therefore they haue obtained the strẽgth of a lawe in so much ꝑ he ꝑ doth against thẽ, doth against iustice. And these be ꝑ custões ꝑ properly be called the cõmon law. And it shal alway be determined by the Iusticez whether there be any such general custõe or not, & not by xij. men. And of these generall custões & of certein principles ꝑ be called maximes which also take effect by the old custõe of the realme, (as shal appere in ꝑ chap. next following) dependeth most part of the lawe of this realme.

heire appeled, which hangeth yet undiscussed praying the ayde of the iustice to knowe whether the infant in this case shalbe said maried or no. In this case if the lawe of the church be / the said sentence of divorce standeth in his strength & vertue vntil it be annulled vpon the said appele. That the infant at the death of hys ancestour was vnmaried because the first mariage was annulled by / divorce. And if the lawe of the church be that the sentence of the divorce stādeth not in effect til it be affirmed vpon the said appele, then is the infant yet maried, so that the value of this mariage cannot belong vnto the lord. Notwithstonding in this case iudgement condytionel shalbe geue &c. And in [illegible] iustices in many other cases shal iudge after the lawe of the Church like as / spirituell iudges must in many cases frame their iudgement after the kinges lawes. Q. How may that be, that the spirituall iudges should iudge after / kinges lawes. I pray the shewe me some certaine case therof. M. Though it be somewhat a digression from our first purpose, yet I will not withlay the desire, but will with good will put thee a case or two thereof, / that thou maist the better perceyue what I meane. If A. & B. haue goods iointly and A. by his last will bequethe hys portyon therein to C. & maketh the said B. his executour & dyeth, & C. alleth the execution of this will in the spirituall court: In this case / iudges there be bounde to iudge that will to be void because it is void by / lawes of / realme. And in likewise if a man be outlawed, & after

by

by his wil bequeth certaine goods to John at Stile, & make his executors & die, ỳ king seyseth the goods & after geueth them again to ỳ executors, & after John at Stile sueth a citation out of the spiritual court against the executors, to haue execution of ỳ wil, in this case the iudges of the spiritual court must iudge ỳ wil to be void, as the law of the realme is that it is. And yet there is no such lawe of forfayture of goods by outlary in ỳ spiritual law.

## ¶ Of the thirde ground of the law of England. The vij. Chapiter.

The third ground of the lawe of Englande standeth vpon diuers generall customes of old time vsed throughout al ỳ realme, which haue bene accepted & approued by our Soueraigne lord ỳ king & his progenitours, & al their subiectes. And because the said customes be neyther against ỳ law of god, nor the law of reason, & haue bene alway taken to be good & necessary for the cõmon wealth of al the realme: Therefore they haue obtained the strẽgth of a lawe in so much ỳ he ỳ doth against thẽ, doth against iustice. And these bee ỳ custõs ỳ properly be called the cõmon law. And it shal alway be determined by the Iudices whether there be any such general custõe or not, & not by xij. men. And of these generall custõs & certein principles ỳ be called maxímes which also take effect by the old custõe of the realme, (as shal appere in ỳ chap. next following) dependeth most part of the lawe of this realme.

And therfore our soueraigne lord the king at his coronatiō amōg other things taketh a solēpne othe, that he shal cause al the custōes of his Realme faithfully to be obserued. D. I pray thee shew me some of thelo generall customes. S. I wil with good wil, & first I shall shewe thee how the custome of the Realme is the very ground of diuers courts in the Realme, that is to say of the Chauncery, of the kings bench, of the cōmon place, & the Eschequer, the which be courtes of recorde, because none may sit as iudges in those courts but by the kings letters patents. And these courtes haue diuers authorities, whereof it is not to treat at this time. Other courts there be also only grounded by the custōe of the realme, that be of much lesse authority then the courts before rehearsed, as in euery shire within the realme, there is a court that is called the cōnty, & an other that is called the sherifes torne, & in euery maner is a court that is called a court Baron. And to euery faire & market is incidēt a court that is called a court of Pipowders. And though in sōe statutes is made mention sometime of the said courts, yet neuertheless of the first institution of the said courts, & that such courts should be, there is no statute nor lawe written in the lawes of Englande. And so al the ground & beginning of the said courts depend vpon the custome of the realme, the which custōe is of so high authority, that the said courtes ne their authorities may not be altered, ne their names chaunged without Parliament.

Also

¶ Also by the old custõe of the realme no mã shalbe taken, imprisoned, disseised, nor otherwise distroied, but he be put to answere by the law of the lãd, & this custõe is confirmed by the statute of Magna charta the xxix. chap.

¶ Also by the old custõe of the realme al mẽ great & smale shal doe & receine Justice in the kinges courte, & this custome is confirmed by the statute of Mar. 1. chapter.

¶ Also by the old custome of the realme, the eldest sonne is onely heire to his ancestor, & if there be no sonnes but daughters, then al the daughters shalbe heires, & so ascẽding of sisters & other kinswomẽ. And if there be neither sõne, daughter, brother, nor sister, thẽ shal the inheritance discend to the next kinsman or kinswomã of the whole bloud to him that had the inheritance of howe many degrees soeuer they be from him. And if there be no heire generall nor spetial thẽ the lãd shal eschete to the Lord of whom the land is holden.

¶ Also by the old custõe of the realme lãds shal neuer ascend, or discend, from the sonne to the father or mother, nor to any other auncester in the right lyne, but it shall rather eschete to the lord of the fee.

¶ Also if any alien haue a sonne that is an alien & after is made Denizen and hath another sonne and after purchaseth landes and dyeth, the yonger son shal inherite as heire & not the eldest.

¶ Also if there be three brethẽ & the middest brother purchase Landes and dyeth wythout heire of his body, the eldest brother shal inherit as

Litt. 12. 4

as heire to him, & not the yonger brother.

¶ Also if land in fee simple discende to a man by the part of his father, & he dieth wythout heire of his body, then the inheritance shal discend to the next heire of the part of his father. And if there be no such heire of the part of his father, thē if the father purchased the lands it shal go to the next heire of the fathers mother & not to the next heire of ꝑ sonnes mother, but it shal rather eschete to the lord of the fee, but if a man purchas lāds to him & to his heires, & die wythout heire of his body, as is sayd before, then the land shal discēd to the next heire of the part of his father if there be any, and if not, then to the next heire of the part of hys mother.

¶ Also the sonne purchaseth lāndes in fee and die wythout heire of his body, the lande shall discēd to his uncle, & shal not ascend to his father, but if the father haue a sone though it be many yeres after the death of ꝑ elder brother, yet that sone shal put out his uncle & shal enioy the land as heire to his elder brother for euer.

¶ Also by the custōe of the realme the childe ꝑ is borne before espousels is bastarde, & shall not inherite.

¶ Also the custūe of ꝑ realme is ꝑ no manner of goods nor catteles real nor personal shal neuer go to ꝑ heire, but to ꝑ executors, or to ꝑ ordinary or administratours. Also the husbande shal haue al the chatteles personeles ꝑ his wyfe had at the time of the espousels or after, & also chatteles real if he ouer line his wife, but if he

fell

ſell or geue away the chatels reals & die, by ꝑ
tails or gift, the intereſt of the wife is determi-
ned & els they ſhal remain to ꝑ wife if ſhe ouer
liue her huſband, alſo the huſband ſhal haue al
the inheritance of his wife wherof he was ſeiſ-
ed in deede in the right of his wife during the
eſpouſels in fee or in fee taile general, for tme
of life, if he haue any child by her to hold as te-
nant by the curteſie of England & the wife ſhal
haue the third part of the inheritāce of her huſ
band wherof he was ſeiſed in deede or in law
after the eſpouſels &c. but in that caſe the wife
at the death of her huſband muſt be of the age
of nyne yeare or aboue or els ſhe ſhall haue
no dowry. Q. what if the huſbād at his death
be vnder the age of xv. yeres. S. I ſuppoſe thee
ſhal yet haue her dower. Alſo ꝑ old law & cuſ-
tome of the realme is, ꝑ after ꝑ death of euery
tenāt ꝑ holdeth his lands by knights ſeruice,
the lord ſhal haue the warde & mariage of the
heir, til the heire cōe to the age of xxi yere, & if
the heire in that caſe be of ful age at the death
of his anceſtor, thē he ſhal pay to his lord hys
reliefe, which at the cōmon law was not cer-
taine, but by the ſtatut of Mag. char. it is put
in certen, ꝑ is to ſay, for euery whole knights
fee to pay C. s. And for a whole barony to pay
a C. marke for reliefe, & for a whole erldome
to pay a C. li. & after the rate, & if the heire of
ſuch a tenant be a woman, & ſhe at the death of
her anceſtor be vnder thage of xiiij. yeres, thē by
the cōmon law ſhe ſhould haue be in ward on-
ly til xiiij. yere, but by the ſtatute of weſtmin
j. in ſuch caſe ſhe ſhalbe in warde til xxj. yere.

And

And if at the death of her auncestor she be of the age of 14. yere or above, she shalbe out of ward though the landes be halden of the king, & then she shal pay relefe as an heire male shal.

¶ Also of landes holden in focage, if the auncestor die, his heire being within the age of 14 yeres, the next friend of the heire to whom the inheritance may not discend shal have the ward of his body & landes, til he shal come to the age of xiiij. yere, & then he may enter. And when the heire comeneth to the age of xxi. yere, thē the garden shal yeld him accompt for the profits therof by him receaued.

¶ Also such an heire in focage for his relefe shal double his rent to the king the yere following the death of his auncestor as if his auncestor held by xx. s. rent, the heire in the yere following shal pay the xx. s. for his rent, & other xx. s. for his relefe, & the relefe he must pay though he be within age at the death of his auncestor.

¶ Also there is an olde lawe & custōe in this realme, that a freehold by way of feffament, gift, or lease, passeth not, without liuery of seald be made vpō the lād accordyng, though a deede of feoffement be thereof made & deliuered: but by way of surrender, particions & exchaunge, a freehold may passe without liuery.

Also ida mā make a will of lād wherof he is seysed in his demesne as of fee, that will is void, but if it had stād in feoffees hands, it had bene good. And also in lōdō such a will is good by the custome of the citye if it be inrowled.

Also a lease for terme of yeres is but a chattel, by the

the lawe, & therefore it may passe without any liuery of seisin, but otherwise it is of a state for terme of life for that is a freehold in the lawe: & therefore liuery must be made or else the freehold passeth not.

Also by the olde custome of the realme, a man may distrein for a rent seruice of common right. And also for a rent reserued vpon a gift in taile, a lease for terme of life, or yeres, & at will, & in such case the Lord may distreine the tenantes, as long as they come vpon the ground, but the beasts of strangers that come in but by manner of an escape, he may not distrein til they haue bene leuant & couchant vpon the ground: but for debt vpon an obligation, nor vpon a contract, gift, for accept ne for forfeyture of accept, nor for no manner of trespas, reparations, nor such other, no man may distreine.

2 Saud: 280: Dy: 317: 318. 1 Jns: 47: 6. 10: H: 7: 21: 6. 2 Saud: 290: 1 Brown: 170.

Also by the olde custome of the realme all issues that shalbe ioyned before iustices in any court of record within the realme, except a issue whereof iurisdiction is not yet granted at this time, must be tried by xij. true & lawfull men of the visne that be not of affinity to none of the parties. And in other courts that be not of record, as in the county court here, hundred, such other like, they shalbe tried by the oth of the parties, & not otherwise, but if the parties consent that it shall be tried by the homage. And it is to be noted that lordes, barons, & all estates of the realme be exempted out of such assises if they will, but if they will willingly be sworne the maner some say it is to their preiudice. But they may if they will haue a writ out of the chancery directed

rected to the shrifte cõmaunding him ẏ he shall not impanel them vpõ no enquest. And of this that is said before it appereth ẏ the customes aforesaid nor other like onto the, wherof be very many in the lawes of England, cannot be proued to haue the strength of a lawe only by reason, for how may it be proued by reason that ẏ eldest sonne shal only inherite his father, & the yongest to haue no part, or that the husband shal haue the whole land for terme of his life as tenãt by the curtesy in such maner as before appeareth. And that the wife shal haue onely the third part in the name of her dower, & that the husband shall haue all the goods of his wife as his owne. And that if hee die liuing the wife that his executours shal haue the goods, & not the wife. All these & such other cannot bee proued only by reason that it should bee so and no otherwise, although they be reasonable, & that with the custome therein vsed sufficeth in the lawe. And a statute made against such generall customes ought to be obserued, because they be not meetly the law of reason.

¶ Also the lawe of property is not the lawe of reason, but a lawe of custom, how be it that it is kept, and is also right necessary to be kept in all realmes and among all people. And so it may be numbred among the generall customes of the realme. And it is to vnderstãd that there is no statute ẏ treateth of the beginning of the said customes nor why they should be holde for lawe. And therfore after them ẏ be learned in ẏ lawes of the realme, ẏ old custom of the realme is the only

only & sufficiēt authority to thē in that behalf, And I pray thee shew me what doctours hold therin, that is to say, whether a custōe only be sufficient authority of any lawe. D. Doctors hold ꝑ a lawe grounded vpon a custome is the most sureste law, but this ꝑ must alwayes vnderstād thereswith, ꝑ such a custome is neither contrary to the law of reason, nor to the law of god. And now I pray thee shew me somewhat of ꝑ maximes of the law of Englande whereof thou hast made mention before in the iiij. chapt. D. I will with good will.

## ¶ Of the iiij. ground of the lawe of England. The viij. Chapter.

THe iiij. ground of the law of England standeth in diuers principles that bee called in ꝑ law, maximes, the which haue bene alwayes taken for lawe in this realme, so that it is not lawefull for any that is learned, to deny them for euery one of those maximes is sufficiēt auctority to himselfe. And which is a maxime, & which not, shal alway be determined by ꝑ iudges, & not by xij. men. And it nedeth not to assigne any reason, why they were first receiued for maximes, for it sufficeth that they be not against the law of reason, nor the lawe of God, and that they haue alway ben taken for a law. And such maximes be not only holde for law, but also other cases like vnto them, & al things that necessarily foloweth vpon the same, are to be reduced to the like lawe, and therefore most commonly there bee assigned some reasons or con-

consideration why such maximes be reasonable, to the entēt that other cases like may the more conuenientlye be applied to them. And they be of the same strength & effect in the law as statuts bee. And though the generall customs of the realme, be the strength and warrāt of the sayd maximes as they bee of the generall customes of the realme, yet because the sayd general customes be in maner knowē through the realme aswell to them that bee vnlearned as learned, and may lightly be had and knowen, and that with little study. And the maximes bee onely knowen in the kinges courtes, or among them that take great study in the law of the realme, and among few other persons. Therefore they bee set in this writing for generall groundes & he that liketh may so accompt them, or if hee will he may take them for on grounde, after his pleasure, of which maxymes I shal hereafter shew their part.

Firth ther is a maxime that escuage vncertein maketh knights seruice.

Also there is another maxime that escuage certaine maketh socage.

Also that he that holdeth by castel garde, holdeth by knightes seruice, but he holdeth not by escuage. And that he that holdeth by rr. s. is the garde of a castell holdeth by socage.

Also there is a maxime that a discent taketh away an entre.

Also that no prescription in landes maketh a right.

Also that a prescription of rent and profit apprender, out of land, maketh a right.

Also

Also that the limitacion of a prescription generally taken is fro the time that no man remembreth to the contrary.

Also that all grauntes may be made vpon condicion in fee or terme of life, or for terme of yeres though no mencion be made of all grauntes and for that cause is of a rent that is graunted, but otherwise it is of a warranty and of a couenaunt.

Also that a condicion to auoide a freehalde cannot be pleaded without deede, but to auoide a gift of a chattell it may be pleaded without deede.

Also that a releace or a confirmacion made by him that at the time of the releace or confirmacion made, had no right, is voide in the lawe, though a right come to him after; except it be with warranty, and then is that barre him of all right that hee shall haue after the warranty made. Anon Lit. 2

Also that a right or title of action that only dependeth in action, cannot be graūt nor granted to none other but onely to the tenaunt of the ground, or to him that hath the reuersion or remainder of the same lande.

Also that in an action of debt vpon a contract, the def. may wage his law, but otherwise it is vpon a scale of bandes for terme of yeres or at will.

Also that if an exigent in case of felony be awarded against a man he doth thereby forfaith forfeited his goodes to the king.

Also if the former bee attainted in the lyke of

the father, and after her purchaseth his charter of pardon of the kinge, and after the father dieth: In this case ꝑ land shal eschete to the lord of the fee, in so much ꝑ though he haue a yonger brother, yet the land shal not discend to him for by the attainder of the elder brother, the bloud is corrupt, and the father, in law dyed without heire.

Also if an Abbot or a Prior alien the landes of his house & dieth, in this case, though his successor haue right to the landes, yet her may not enter: but he must take his action ꝑ is appointed him by lawe.

Also there is a maxime in the lawe, that if a villayne purchase landes and the lord entre, he shal enioy ꝑ land as his owne: but if ꝑ villaine alien before the lorde enter, the alienation is good. And the same lawe is of goods.

Also if a man steale goods to the value of xij. d, or aboue, it is felony, & he shal die for it. And if it be vnder ꝑ value of xij. d. then it is but petite larceny, and he shal not dy for it, but shalbe otherwise punished after ꝑ discretion of ꝑ Judges, except it bee taken from the person, for if a man take any thinge how litle soeuer it bee frō a mās person feloniously, it is called robbery & he shal die for it.

Also he ꝑ is arraigned vppon an inditement of felony shalbee admytted in fauour of life to challenge xx. of iurours peremptorily, but if he challenge any aboue that number, the lawe taketh him as one that hath refused the lawe, because he hath refused three whole enquestes, &

there-

therefore her shal die, but of cattle her may challeng as many as he hath cause of challenge to. And further it is to be vnderstād, ꝑ such peremptory challenge shal not bee admitted in appeale bycause it is at the suit of the party.

Also the land of euery man is in the law enclosed frō other, though it lie in the open fielde. And therefore if a man do a trespas therin, the writ shalbe Quare clausum fregit.

Also the rentes, commons of pasture of turbary, reuersions, remainders, nor such other thinges which lye not in manuel occupation, may not bee geuen nor graunted to none other without writing.

Also that he ꝑ recouereth dede or damages in the kinges courte by such an action wherein a Capias lay into ꝑ prouisse, may win a yere after ꝑ recouery, haue a Capias ad satisfaciendum to take the body of the defendāt, and to commit him to prison til he haue paide the debt and damages, but if there lay no Capias in the first action then the pleintife shal haue no Capias ad satisfaciendum, but must take a Fieri facias, or an Elegit within ꝑ yere or a Scire facias after the yere, or within the yere if her will.

Also if a releale or confyrmation bee made to him, ꝑ at the time of the releale made, had nothing in the land &c. The releale or confyrmation is voide, except in certain cases, as to vouchy and certaine other which neede not here to be remembred.

Also there is a maxime in the lawe of England, that the kynge may dispose no man, ne

that no man may disseise the kinge, ne pull any reuersion or remainder out of him.

Also the kinges excellency is so high in the lawe, that no freehold may be geuen to the kinge ne bee deriued from him, but by matter of record.

Also there was sometime a Maxime and a lawe in Englande, that no man shoulde haue a writ of right, but by special suit to the king, & for a fine to be made in the chaūcery for it. But these maximes be chāged by ỳ statute of Magna carta, the xxix. chapter, wher it is said thus, Nulli negabimus, nulli vendemus rectum vel iustitiam. And by the wordes nulli negabimus, a man shall haue a writ of ryght of course in the Chauncery without suing to the king for it. And by the wordes, nulli vendemus, he shal haue it without fine: and so many times ỳ olde Maximes of the lawe bee chaūged by Statutes.

Also, though it be reasonable that for the manyfold diuersities of actions ỳ bee in the lawes of England, that there should be diuersities of proces, as in the real actions after one maneve in personall actions after an other maner: Yet it cannot be proued meerely by reason, that the same processe ought to be had & none other: for by statut it might be altered. And so the ground of the said processe is to be referred only to the maximes and customes of the realmes.

And I haue shewed thee these maximes before rehearsed, not to the entent to shewe thee specially what is the cause of the lawe in them, for ỳ would aske a great respite. But I haue

shewed

shewed them onely to the entents ꝑ thou maist perceiue that ꝑ said Maximes and other like, may conuenientely be set for one of the grouds of the lawe of England. Moreouer there be diuers causes, whereof I am in doubt whether they be onely Maximes of the law, or that they be grounded vpon the law of reaso, wherein I pray thee let me heare thine opinion.

D. I pray thee shewe thy cases ꝑ thou meanest, and I shal make thee answere therein as I shal see cause.

¶ Hereafter followe diuers cases, wherein the Student doubteth whether they be onely Maximes of the law, or that they be grounded vpon the lawe of reason.

## ¶ The ix. Chapiter.

THe lawe of England is, that if a man commaunde an other to doe a trespasse, & he doth it, that the commaunder is a trespasser. And I am in doubt whether that it be onely by a Maxime of the law, or ꝑ it be by the lawe of reason.

Also, I am in doubt vppon what lawe it is grounded, that the accessary shal not be put to answere before the principal &c.

Also, the law is that if an Abbot bily a thing that coueteth to the vse of the house, and dieth, that his successours shalbe charged: And I am somewhat in doubt vppon what grounde that

lawe dependeth.

Also, that he þ hath possession of land though it be by disseisin hath right against al men, but against him that hath right.

Also, that if an actiō real be sued against any mā that hath nothing in the thing demaūded, the writ shal abate at þ cōmon lawe.

Also, that the alienatiō of the tenāt hanging the writ nor his entre into religion, or if he be made a knight, or if she be a woman & take an husbande hanging the writ, that the writ shal not abate.

Also, if land & rēt that is going out of þ same land, come into one mans hande of like estate, & like iuertie of title, the rent is extinct.

Also if land discend to him that hath right to þ same lande before, hee shalbe remitted to hys better title if he wil.

Also if two titles be concurraunt together, þ eldest title shalbe preferred.

Also that euery man is bound to make recōpence for such hurt as his beasts shal do in the corne or grasse of his neighbour, though hee know not that they were there.

Also if the demaundant or plaintife hanging hys writte, wil enter into the thinge demaunded, hys writt shall abate. And it is many times very hard & of great difficulty to knowe what cases of the lawe of England be grounded vppon the lawe of reason, and what vpon custome of the Realme, and though it be harde to discusse it, it is very necessary to be knowē, for the knowledge of the perfect reason of the

lawe

lawe: & if any mā think that these cases before rehearsed be grounded vpon the law of reason, then he may referre them to the first ground of the law of England, which is the law of reasō wherof is made mention in the v. chap. And if any man thinke that they be grounded vpon ỹ law of custōe, then he may referre them to the maximes of the law, which be alleged for the thirde ground of the lawes of England, wherof mention is made in the viij. chap. as before appeareth.

D. But I pray thee shew me by what authority is it proued in the lawes of England ỹ ỹ cases that thou hast put before in the viij. cha. & such other which ỹ callest maximes ought not to be denied, but ought to be takē as maximes, for sithe they cannot be proued by reason as thou agreest thy selfe they cannot, they may as lightly be denied as affirmed, vnlesse there bee some sufficyent authoritye to approue them.

S. Many of the customes and maximes of the lawes of England be knowen by the vse & the custōe of the realme so apparantly that it needeth not to haue any lawe written thereof, for what needeth it to haue any lawe written that the eldest sone shal enherite his father, or that al the daughters shal enherite together as one heire, if there be no sonne, or that the husband shal haue the goodes & chatels of his wife that she hath at the time of ỹ espousels, or after or ỹ a bastard shal not inherite as heire, or ỹ executors shal haue the disposition of al ỹ goods of

their testatour: & if there be no executours that the Ordinary shal have it, & the heire shal not meddle with the goodes of his ancestour, but if any particuler customes help him.

The other Maximes & customes of the law that be not so openly knowen among the people may be knowen partly by the law of reason & partly by the bookes of the lawes of England called yeres of formes, and partly by diuers recordes remaynyng in the Kinges courts & in his treasury. And specially by a booke that is called y Register, & also by diuers statutes wherein many of the said customes & Maximes be oft recyted, as to a diligent learner shal euidently appeare.

## Of the first ground of the lawe of Englande.

### The 2. Chapiter.

The fifth grounde of the lawe of Englande standeth in diuers perticuler customes vsed in diuers countries townes, Cities, and Boroughtships in this Realme, the which perticuler customes, because they be not against the lawe of reason nor the law of God, though they be against the layd general customes or Maximes of the law, yet neuertheleelle they stande in effect & be taken for law, but if it ryse in question in the kinges courts, whether there be any such particuler custome or not, it shalbe tryed by xij. men, and not by the Iudges, except

the

the same particuler custome be of record in the same court. Of which perticuler customes. I haue hereafter noted some for an example.

First there is a custõe in Kent that is called Gauelkind, that al the brethre shal inherit together, as sisters at the common law.

Also there is another perticuler custome, that is called burgheenglish, where the yõger sonne shal inherit before the eldest, & that custome is in Notingham.

Also there is a custome in the Citie of Lõdõ that free men there, may by their testamente enrouled bequeath their landes that they be seised of to whom they wil, except to mortmain. And if they be Citizens & freemẽ, that they may also bequeth their landes to mortmaine.

Also in Gauelkind though the father be hãged, the sõne shal inherit. For their custõe is, the Father to the boughe, the sonne to the plough.

Also in some countreyes the wyfe shall haue the halfe of the husbandes landes in the name of her dowry as long as she liueth sole.

And in some countrey the husband shal haue the halfe of the inheritance of his wife, though he haue no issue by her.

Also in some countrey an infant when he is of age of xv. yere may make a feoffement, & the feoffement good. And in some countrey when he can meat an ell of cloth.

## Of the first ground of the lawe of Englande.

The

# The xj. Chapiter.

¶ The xj. Chapiter.

The sixth grounde of the lawe of Englande standeth in diuers statutes made by our soueraigne Lord the king and his progenitours, & by the lordes spiritual & temporal, & the comōs in diuers parliamēts, in such cases where the lawe of reason, the law of God, customes, maximes, ne other grounds of the lawe seemed not to be sufficient to punishe euil men, & to reward good men. And I remēber not þ I haue seene any other grounds of the law of Englād but onely these that I haue before remembred. Furthermore it appeareth of that I haue said before, that oft times two or three grōuds of þ law of England muste be ioined together, or þ the plaintife can open & declare his right, as it may appeare by this example. If a man enter into an other mans lande by force, & after maketh feoffement for maintenāce to defraud the plaintife from his actiō: In this case it appereth þ the said vnlawful etre is prohibited by the law of reason, but the plaintife shall recouer treble damages, that is by reasō of the statute made in the 8. yere of king Henry þ vj. ix. chap. And that the damages shalbe tessed by xij. men, þ is by the custome of the realme. And so in this case three grounde of the lawe of Englande maintaine the plaintifes action.

And so it is in diuers other cases that needs not to be remembred now, & thus I make an end for this time, to speake any farther of the grounds of the law of England, D. I thanke

thee for the great paine ỳ thou hast taken therin. ne nertheles for asmuch as it appeareth that thou hast said before, that the learned men of ỳ law of England pretend to verifie that ỳ law of England wil nothing doe, ne attempt against the law of reason, nor the law of God, I pray the answere me to some questions grounded upon the law of England how as thou thynkest the lawe may stande with reason or conscience in them.

S. But the case & I shal make answere therin as wel as I can.

¶ The first question of ỳ Doctour, of the lawe of Englande and conscience.

¶ The xij. Chap.

I Haue heard say, that if a mā ỳ is bounde in an Obligation pay the money, but he taketh no acquitaunce, or if he take one & it happeneth him to lese it, ỳ in that case he shalbe copelled by the lawes of England to pay the money againe, & how may it be said then, that that law standeth with reason or conscience, for as it is grounded upon the law of reason, that debtes ought of right to be paied, so it is grounded upon the law of reasō (as me semeth) that whē they be paied that he that payed them should be discharged. S. First thou must understande that it is not the lawe of Englande, that if a manne that is bound in an Obligation paye the money without acquytaunce

or

or if he take acquittance and lose it, that therefore the lawe determineth he hath ought of right to pay the money ageinne, for that lawe were both against reason and conscience, but though it is thus there is a general Maxime in ye lawe of England, that in an action of dett sued vpō an obligation, the defendant shal not pleds that he oweth not the money, ne can in no wise discharge himselfe in that action, but he haue acquittance or some other writing sufficient in ye lawe, or some other thing like, wherebye that he hath paied the money, and that is ordeyned by the lawe to auoyde a great inconuenience that els might happen to come to manye people: that is to say, that euery man by a nude parol and by a bare auerrment shoulde auoyde an obligation. Wherefore to auoyd that inconuenience the law hath ordeined that as the defendant is charged by a sufficient writing, that he must be discharged by sufficient writing, or by some other thinge of as high authority as the obligation is. And though it may followe thereupon, that in some particuler case a man by defaulte of that generall Maxime may be compelled to pay the money againe that he payed before, yet nathelesse, no default can be thereby alleged in ye lawe. For the makers of lawes cane haue no suche thinges as may ofte fall, and be moste inconuenient amongs the people, rather the vse perticuler cases. And likewise the generall groundes of the lawes of England bene more wise as good for many, then what is good for one singuler person only. Wherbe cause it shoulde

Lit: 98

it shoulde bee a hurt to many, if an obligation should be so lightly auoided by worde, therefore the lawe specially preuenteth that hurt vnder such maner as before appereth. And yet intendeth not nor commaundeth not, that the money of right ought to be paide againe, but setteth a general rule which is good and necessary to all the people, and that euery man may well keepe without it be through his owne default. And if such default happen in any person, whereby hee is without remedy at the common lawe, yet hee may be holpen by a good pena, and so he may in many other cases where conscience serueth for him that were to long to rehearse nowe.

D. But I pray thee shew me vnder what maner a manne may be holpen by conscience. And whether he shal be holpen in the same courte or in an other. S. Because it cannot bee well perceiued where a man shal be holpen by conscience & where not, but it bee first knowen what conscience is, therefore because it pertaineth to this most properly, to treate of the nature and qualitie of cõscience, therfore I pray thee that thou wilt make me some declaration of the nature and qualitie of conscience, & then I shal answere to thy question as well as I can.

D. I wil with good will doe as thou sayest, and to the entent that thou maist the better vnderstande that I shal say of conscience, I shall first shewe thee what Synderesis is, and then what reason is, & then what conscience is, and how these three differ among the selfe, I shall somewhat touche.

What

## ¶ What Sinderesis is.

### The xiij. Chapt.

Sinderesis is a nyturall power of the soule set in the highest part thereof, moving and stirring it to good and abhorring euil. And therefore Sinderesis neuer sinneth nor erreth.

And this Sinderesis our Lord put in man to the intent þ the order of thinges should be obserued. For after saint Dionise, the wisedome of God ioyneth þ beginning of the second thinges to the last of the first thinges, for Angel is of a nature to vnderstād without serching of reason, & to that nature man is ioyned by Sinderesis, the which Sinderesis may not wholly bee extincted neither in man, ne yet in dāpned soules But neuertheles as to þ vse & exercise thereof, it may bee let for a tyme, eyther through the darknes of ignorāunce, or for vndiscrete delectation, or for the hardnes of obstinacy. First by the darkenesse of ignorāunce Sinderesis may bee let that it shal not murmur agaynst euill, because he beleueth euil to be good, as it is in heritikes, the which when they die for the wickednes of their Errour, beleeue þ they dye for the very trouth of the faith. And by vndiscreete delectation, Sinderesis is sometime so ouer layde, that remorse or grudge of conscience for that time can haue no place. For or þ hardnes of obstinacy Sinderesis is also let that it may not stirre to goodnesse, as it is in dampned

soules

soules that be so obstinat in euil that they may neuer bee enclined to good. And though Sindereſis may be sayd to that point extinct in damned soules, yet it may not bee sayd ꝑ it is fully extinct to al intents. For they alway murmur against ꝑ euil of the paine ꝑ they suffer for sinne. And so it may not be sayd ꝑ it is vniuersally, & to al intents, and to al times extinct: and thus Sindereſis is the beginninge of al thinges that may bee learned by speculation or studye, and ministreth the general grounde and princyples thereof. And also of all thinges that are to be done by man, an example of such thinges as may be learned by speculatiō apereth thus: Sindereſis saith that euery whole thing is more then any one part of the same thinge, and that is a sure grounde that neuer fayleth. And an example of thinges that are to bee done, or not to be done: as where Sindereſis saith no euil is to be done, but that goodnes is to be done and followed, and euil to be fled, and such other.

And therefore Sindereſis is called by some men, the lawe of reason, for it ministreth the princyples of the law of reason, the which bee in euery man by nature, in that hee is a reasonable creature.

## ¶ Of reason.

## The xiiij. Chapter.

Where-

VVhen the firſt manne Adam was created
he receyued of God a double eye, that is
to ſay, an outwarde eye, wherby he might ſe
bydible thinges, and knowe his bodely ene-
mies and eſchewe them. And an inwarde eye,
that is the eye of reaſon, wherby he might
ſe his ſpirituall enemyes that fights againſt
his ſoule and beware of them. And amonge all
giftes that god gaue to man, this gift of reaſon
is the moſt noblieſt, for therby ma pzecelleth all
beaſtes, and is made like to the dignity of An-
geles, diſcerning trouth from falſhed, and euil
from good. wherfore he goeth farre from the
effect that he was made to, when he taketh no
harde to the trouth, or when he preferreth euil
before good. And therfore after Doctours rea-
ſon is the power of ỹ ſoule, that diſcerneth be-
tweene good and euill, and betweene good and
better, comparynge the other: the which eſ-
ſheweth vertues, loueth god, and flieth vices.
And reaſon is called righteous and good, for
is conformable to the will of God, and that is
the firſt thing, and the firſt rule that al thing
muſt be ruled by, & reaſõ that is not right re-
nor ſtraight, but that is ſaid culpable, & euil,
becauſe ſhee is deceyued with an errour that
might be ouercome, or els through her pryde
or ſlouthfulnes ſhe enquireth not for knowledge
of the trouth that ought to bee enquired. All
reaſon is deuided in two partes, that is to ſay,
into the higher part & into the lower part.
The higher part hideth heauenly thinges and
eternall, and reaſoneth by heauenly lawes &
by

by heauenly reason what is to be done, & what is not to be done, and what thinge God commaundeth, and what he prohibiteth. And this higher part of reason hath no regard to transitory thinges or temporal thinges: but þ sometime as it were by maner of counsel, she byideth forth hauyly reasons to order wel temporal thinges. The lower part of reason worketh most to gouerne wel temporal thinges, and she groundeth her reasons much vpon lawes of man, & vpon reason of man, wherby she concludeth þ this to be done that is honest and expedient to the cõmon wealth, or not to be done, for it is not expedient to the common wealth. And so þ reason whereby I know god and such thinges as pertaine to god, belongeth to þ highest part of reason. And that reason whereby I know creatures belongeth to the lower part of reason. And though these two parts, that is to say, the higher part & the lower part be one in dede & essece, yet they differ by reason of their working & of their office as it is of one self eye, that sometime loketh forward, and sometime backwarde.

## ¶. Of conscience. The xv. Chapter.

This word conscience, which in Latin is called Conscientia is compounded of this preposition: cum, that is to say in English, with, and with this worde scientia, þ is to say in English, knowledge, and so conscience is as much to say as knowledge of one thing in an other thing, & conscience so taken is nothing els but an ap-

plying of any science or knowledg to some par-
ticuler act or mā. And so cōscience may somtime
erre & somtime not erre. And of cōscience thus ta-
ken, doctors make many discriptions, whereof
one doctor saith, that conscience is the lawe of
our vnderstanding. Another, ỳ conscience is an
habite of ỳ minde discerning betwixt good and
euil. Another, that cōscience is ỳ iudgement of
reason, iudging on the particuler actes of man,
al which sayings agree in one effect (that is to
say) that cōscience is an actual applying of any
cūning or knowledge to such things as be dōe,
whereupon it followeth ỳ vpon the most perfit
knowledge of any lawe or cūning, & of the most
perfit & most true applying of the same to any
particuler act of man, followeth the most perfit
the most pure, & the most best cōscience. And if
there be defaute in knowing of ỳ truth of such a
lawe, or in ỳ applying of the same to particuler
acts, then therupō followeth an error or default
in cōscience, as it may appeare by this example.
Sinderesis ministreth a vniuersal principle ỳ ne-
uer erreth (that is to say) ỳ an vnlawful thige
is not to be done. And yet it might be taken by
some man ỳ euery oth is vnlawful because the
Lord saith. Mat. v. Ye shal in no wise sweare.
And yet he ỳ by reason of the saide wordes will
hold that it is not lawfull in no case to sweare
erreth in cōscience, for he hath not ỳ pfit knowe-
ledge & vnderstandinge of the truth of the sayd
gospel, nor he reduceth not the saying of scrip-
ture, to other scriptures, in which it is grāted ỳ
in some case an oth may be lawful, & the cause

why

why cõscience may so erre in ỹ said case, & in other like, is because cõscience is formed of a certaine propositiõ, or questiõ grounded principally vpon vniuersal rules ordeined for such thinges as are to be done. And because a particuler propositiõ is not knowẽ of himself, but must apere & be searched by a diligẽt search of a reaõ, therfore in search & in the cõscience ỹ should be formed therupõ may haỹe to be erroz, & thereupon it is said ỹ ther is erroz in cõscience, which erroz cõmeth either because he doth not assent to ỹ he ought to assent vnto, or els because his reasons whereby he doth refer one thing to an other, is peruerted. For further declaratio wherof it is to vnderstand ỹ erroz in cõscience cõmeth by .iii. maner of waies. First is through ignorace: & that is whẽ a mã knoweth not what he ought to do & thẽ he ought to aske cõsel of the ỹ he thinketh most expert in that science, whereupon his doubt riseth. And if he can haue no cõsel then he must wholly cõmit him to God: & he of his godnes wil so order him, ỹ he wil saue him frõ offence. The second is through negligence, as when a man is negligẽt to search his own cõscience, or to enquire the truth of other. The third is through pride, as when he wil not meken himself, ne beleue them ỹ be better & wiser then he is. The fourth is through singularity as whẽ a man followeth his owne wit, & wil not conforme himself to other, nor followe the good common waies of good men. The fift is through an inordinate affection to himself wherby he maketh cõscience to follow his desire

& so hee causeth her go out of her right boundes. The first is through pusillanimity whereby the person dreadeth oft times such things as of reason he ought not to dread. The seconde is through perplexity, & that is when a man beleeueth himself to be so set betwixt two things, that he thinketh it impossible, but that he shal fal into the one, but a man can neuer be so perplexed in deed, but through an errour in conscience: and if hee will put away that errour he shalbe deliuered, therefore I pray thee that thou wilt alwaies haue a good conscience, & if thou haue so, thou shalt alwaies be mery, and if thine own hart reproue thee not thou shalt alwaies haue inwarde peace. The gladnes of rightwise men is of god and in god, and their ioy is alwaies in truth and goodnes. There be many diuersities of conscience, but there is none better then that, whereby a man truely knoweth himself. Many men know many great & high cunning thinges, & yet know not themselues, and truely he that knoweth not himself knoweth nothing wel. Also he hath a good and cleane conscience, that hath purity & cleanes in his hart, truth in his worde, & rightwilsnes in his deede. And as a light is set in a lantern that is in the house may be seene thereby, so almighty god hath set conscience in the minds of euery reasonable soule as a light whereby he may discern & know what he ought to do, & what hee ought not to doe. Therefore for almuch as it behoueth thee to be occupied in such things as perteine to the law: It is necessary that thou euer haue a pure & a clean conscience, specially in such thigs as concerne

verne restitution: for the sinne is not forgiuen but if y thing yis wrongfully taken be restored And I counsel thee also y thou loue yis good & lie that is euil, & that thou doe to another as thou wouldest howld be done to thee, & y thou do nothig to other y thou wouldest not howld be doe to thee. That thou doe nothing against truth, that thou liue peaceably in thy neighbour, & that thou doe Iustice to euery man as much as in thee is. And also that in euery general rule of the lawe thou do obserue & kepe equitees if thou do thus, I trust y light of the lanterne, that is thy conscience shal neuer be extincted. D. But I pray thee shew me what is that equity that thou hast spoken of before, & y thou desirest that I should keepe. D. I will with god wil shew thee somewhat therof.

## What is equity. The xvi. chap.

EQuitie is a right wiseness that cõsidereth all y the perticuler circumstances of the deede, the which also is repaired by the generalnes of mercy. And such an equity must alway be obserued in euery lawe of man, and in euery generall rule therof, and that knewe he well, that said thus. Lawes ought to be ruled by equity. And y wise man saith. Be not ouer much righteouse: for y extreme right wiseness is extreme wrongge. As who saith: if thou take al y y words of y lawe, exacte thee, thou shalt sometime do against y lawe And for the plainer declaratio what equity is thou shalt understand that sith y deedes & acts

of men, for which laws ben ordeined, happe in diuers maners infinitely. It is not possible to make any generall rule of ꝑ law but that it shal faile in some case, & therefore makers of lawes take hede to such things as may often come & not to euery perticuler case, for they could not though they would. And therfore to follow ꝑ wordes of ꝑ law were in some case both against iustice & the common wealthe wherfore in soe cases it is necessary to leaue the wordes of the law, and to follow that reason & iustice requireth, and to that intent equity is ordeined: that is to say, to temper & mitigate the rigour of ꝑ law. And it is called also by some men Epieaia, the which is no other thing but an exception of the law of god, or of the law of reason from the generall rules of the law of man, when they by reason of their generalty would in any perticuler case iudge against ꝑ law of god, or the law of reason, ꝑ which exception is secretly vnderstād in euery generall rule of euery positiue law And so it appeareth that equity taketh not away ꝑ very right but only that ꝑ semeth to be right by the generall wordes of ꝑ law, for it is not ordeined against the cruelnes of the law, for the law in such case generally taken, is good in hymself but equity followeth ꝑ law in al perticuler cases where right & iustice requireth, notwithstanding that generall rule of ꝑ law be to ꝑ contrary: wherfore it appereth ꝑ if any lawe were made by a man about any such exception expressed or implied it were manifestly vnreasonable, & wer not to be suffered: for such cases might soe ꝑ

that

that would obserue ꝑ law, should breake both the law of God & the lawe of reason. As if a mā make a vow ꝑ he wil neuer eat whit meat & after it happeneth him to come there where he can get no other meat. In this case it behoueth him to breake his a vow, for that ꝑticuler case is excepted secretly from his generall a vow by this equity or Epicay, as it is said before. Also if a law were made in a city ꝑ no mā vnder ꝑ paine of death should ꝓpē the gates of the city before the sunne rising, yet if ꝑ citizēs before that houre flying frō their enemies cōe to the gates of the City, & one for sauing of ꝑ Citizens openeth the gates before the howre appointed by the law, yet he offendeth not the law for that case is excepted frō ꝑ said general law by equity as is said before: & so it appeteth ꝑ equity rather followeth ꝑ intent of the law, then the wordes of the lawe. And I suppose ꝑ there be in likewise some like equities grounded vpō the general rules of the law of the realme. As. Ye verely, wherof que is this, there is a generall prohibition in the lawes of England: that it shal not be lawful to any mā to enter into ꝑ freeholde of an other without auctority of ꝑ owner or of ꝑ law, but yet it is excepted frō ꝑ said prohibition by ꝑ law of reason, that if a mā driue beastes by the high way & the beastes happen to escape into the corne of his neighbour, & he to bring out his beastes ꝑ they should do no hurt goeth into ꝑ ground & fetteth out ꝑ beastes there he shal not tine that enter into the ground by the law. Also notwithstanding the statute

of Edward the third made the xiij. yere of his
reygne wherby it is ordeined that no mā vpon
paine of imprisonment should gyue any almes to
any valiant begger, that is wel able to labour.
Yet if a mā mete with such a valiant begger in
so colde a wether and so light apparell, that yf
he haue no clothes he shal not be able to cōe to
any towne to haue succor, but is likely rather
to die by the way, & he therfore geueth him ap-
parel to saue his life he shalbe excused of ỳ said
statut by such ah exception of the law of reaſ
as I haue spoken of. I. I know well that as
thou saist he shalbe excepted of the said statute
by conscience, & quet ỳ, that he shal haue great
reward of god for his good deede, but I would
wit whether the party shalbe so discharged in
the cōmon law by such an exception of the law
of reason or not, for thoughe ignorāce vnuincī-
ble of a statute excuse ỳ party against god (yet
as I haue heard) it excuseth not in the lawes
of ỳ realme, ne yet in chauncery as some say, al-
thoughe ỳ cause be so ỳ the party to whō ỳ for-
feiture is geuen may not with conscience leaue it.
Sy. Verely, by thy question thou hast put me in
a great doubt, wherefore I pray the geue me a
respite therin to make thee an answere, but as
I suppose for ỳ time (howbeit I will not fully
affirme it to be as I say) but it should serue ỳ
he should well plede it for his discharge in ỳ cō-
mō law, because it shalbe take ỳ it was ỳ entēt
of the makers of ỳ statute to except such cases.
And ỳ iudges may many times iudge after the
mind of the makers of statutes as farre as the letter may
suffer

suffer & so it semeth they may in this case. And diuers other exceptions there be also frō other general grouides of the law of the Realme by such equitie, as thou hast remembred before, that were two long to rehearse now. D. But yet I pray thee shew me shortly somwhat more of thy mind vnder what manner a mā may be holpen in this realme by such equity. S. I. wil with god wil shew ther somewhat therein.

## ¶ In what maner a man shalbe holpen by equitie in the lawes of England.

### ¶ The xxv. Chapiter.

FIrst it is to be vnderstand there be in many cases diuers exceptiōs frō ꝑ general grouns of ꝑ law of ꝑ realm by other reasonable grouns of the same lawe, whereby a man shalbe holpē by prōued law, as it is of this general grouns, that it is not lawful for any mā to enter vpon a deferent, yet the reasonablenes of the law excepteth from that ground, an infant that hath right, & hath sufferd, such a diseās & hath also ꝑ maketh continual claime, & suffereth the to enter, notwithstanding the diseās. And of that exception they shal haue auauntage in the cōmon law, and so in this case of diuers statutes, as of the statute wherby it is prohibited, that certein persons or tenants shal do no waste, yet if a lease for terme of yeres be made to an infant ꝑ is within ages of discretiō, as of the age of .xx. yeres, & a stranger do waste, in this case the

infant

infant shal not be punished for the wast, for he is excepted & excused by the law of reaſō. And a woman couert to whom such a leaſe is made after couerture shalbe also discharged of wast after her husbands death by a reasonable maxime & custome of the realme. And also for reperatiōs to be made vpon ꝑ same groūd, it is law full for such perticuler tenantes to cut downe trees vpon the same groūd to make reparatyons. But the cause there as I suppose is for ꝑ the mind of the makers of the said estatut, shal be taken to be, that that caſe shoulde be excepted. And in al these cases ꝑ parties shalbe holpen in ꝑ same court & by ꝑ cōmon law, & thus it appeareth that sometime a mā may be excepted frō the rigor of a maxime of ꝑ law by another maxime of ꝑ law. And sometime frō the rigor of a statute by the law of reaſon, & sometime by the intent of the makers of ꝑ statute, but yet it is to be vnderstand ꝑ most cōmonly, where any thing is accepted frō ꝑ general customes or maximes of the lawes of the realme. By the law of reaſō the ꝑty must haue his remedy by a writ ꝑ is called Sub pena. If a Sub pena lye in the caſe, but where a Sub pena lyeth, & where not, it is not our intent to treat of at this tyme. And in some caſe there is no remedy for such an equity by way of compulsion, but al remedye therein must be committed to the conscience of the partie. Qu. But in caſe where a Sub pena lieth to whom shal it be directed, whether to the iudge or to the party. Ed. It shal neuer be directed to the iudge, but

to

to the parte plaintife or to his attourney and therupon an Iniunction cõmaunding the by ꝑ same vnder a certaine paine therein to be contayned that he proceede no further in the common lawe vntil he be determined in ꝑ kinges Chauncery whether the plaintife hath right in conscience to recouer or not. And when the plaintife by reason of such an Iniunction ceaseth to aske any further processe, the Iudges shall in lyke wise ceasse to make any further proces in that behalfe.

D. Is there an entencion made in the lawe of England of any such equities? S. Of this true equitie to the entent that is spoke of here, there is no mention made in the lawe of Englande, but of an equity deriued vpon certeine statutes thereyon is made many times and often in the law of Englande. But that equity is of an other effect then this is, but of the effect of this equity that we now speake of, mencion is made many times, for it is oftentimes vsed in ꝑ lawe of England, where a Sub pena lyeth and where not: & daily billes be made by men learned in ꝑ law of ꝑ realme, to haue Subpenas. And that is not prohibited by the lawe, but they may wel doe it so ꝑ they make them not, but in case where they ought to be made, and not for veration of the party, but according to ꝑ truth of ꝑ mat̃. And the law wil in many cases ꝑ there shalbe such remedy in the chauncery by diuers things grounded vpon such equities, and thõ the lord Chauncellor must order his conscience after ꝑ rules and grounds of the lawe of the realme,

in so much that it had not bene inconuenient to haue assigned such remedy in the chauncery vpō such equities for the seuen grounds of the lawe of England, but for asmuch as no remedy remaineth in the kinges court of no such bil nor of þ writ of such pena or iniunction that is sued therevpō, therefore it is not set for a special ground of þ lawe, but as a thing þ is suffered by the lawe. D. The fifth þ partiall ought of right in many cases to be holpē in the chauncery vpō such equities: It semeth þ if it were ordeyned by statute, that there should be no remedy vpon such equities in þ chauncery nor in none other place, but þ euery matter should be ordered only by the rules & grounds of the cōmō lawe, that þ statute were against right & cōscience. S. I think the same, but I suppose there is no such statute. D. There is a statute of þ effect, as I haue heard say, wherein I would gladly heare thy opinion. S. Wherefore that statute and I shall both god willi say as mā thinketh therin.

¶ Whether the statute hereafter rehersed by the Doctour be against conscience or not.

¶ The xviij. Chapiter.

There is a statute made in þ viij. yere of king Henry the fourth, the xxj. Chapiter, wherby it is enacted that no writ nor writs of priuy seale, nor writ of priuy seale, nor writ of the kinges signet, nor writ of the kinges priuy signet, nor writ of the kinges priuy signet, nor writ of the kinges priuy

parliament, nor els where, by which statut it appereth that if any iudgement be geuen in the kings courtes against an equity or against any matter of conscience, that there cā be had no remedy by that equity, for the iudgement cannot be reuoked without examination, and the examination is by the said statut prohibited, wherfore it seemeth that ꝑ said statut is against cōscience, what is thine opinion therein. ℟.

If iudgements geuen in the kinges courtes should be examined in the chauncery before the kings counsel, or in any other place, the plaintifs or demaundes should be seldome come to the effect of their suit, ne ꝑ suluo should neuer haue ende. And therfore to eschew that inconuenience ꝑ that ye was in doe. And though peraduenture by reason of ꝑ statuts, some singuler ꝑson may happē to haue loss: yet euery cause ꝑ said statute is very necessary to eschue many great vexatiōs & vnnull expēces ꝑ would els come to many plaintifs ꝑ haue rightwisely recouered in ꝑ kings courtes. And it is much more prouided for, in the laws of England ꝑ iust not damages should not come to many, the only to one. And also the said statute doth not prohibite equity, but it prohibiteth only the examination of the iudgement for the eschewing of the inconuenience before rehearsed. And it seemeth that the said statut standeth with good conscience. And in many other cases where a man doth wrong yet he shal not be cōpelled by way of compulsion to reforme it, for many times it must be left to the cōscience of ꝑ party, whether he wil re-

dresse

dzelle it or not. And in such case he is in conscience as wel bound to redzesse it, if hee will save his soule, as he were if he were compellable thereto by ꝑ law, as it may appere in diuers cases y may be put vpon the same ground. D. I pray thee put some of these cases for an example. S. If the defendant wage his law in an action of debt brought vpon a true debt, the plaintife hath no meanes to come to his debt by way of compulsion, neither by Subpœna nor otherwise, yet the defendant is bound in conscience to pay him. Also if the graund Jury in attaint affirm a false verdit geuen by the pety Jury, there is no further remedy but the conscience of the party. Also where there can bee had no sufficient proofe, there can be no remedy in the chauncery, no more then there may bee in the spirituall court. And because thou hast geuen an occasion to speake of cõscience I would gladly here thy opinion where conscience shalbe ruled after the law, & where the law shalbe ruled after conscience. D. And of that matter I would likewise gladely here thy opiniõ, specially in cases grounded vpõ ꝑ lawes of England, for I haue not heard but litle therof in time past, but before ꝑ put any cases thereof: I would that thou wouldest shew me how these two questions after thy opinion are to be vnderstand.

¶ Of what law this question is to be vnderstand: that is to say, where cõscience shalbe ruled after the lawe.

¶ The xix. Day.

The

The lawe whereof mention is made in this question, that is to say: wher conscience shalbe ruled by the lawe, is not as me semeth to bee vnderstand only of the lawe of reason, and of ꝑ law of God, but also of the law of man, that is not contrary to the law of reason, nor ꝑ law of God, but that it is superadded vnto them for ꝑ better ordering of the cōmon wealth, for such a law of mā is alwaies to be set as a rule in cōscience, so that it is not lawful for a man to go frō it on the one side, ne on the other, for such a law of man hath not onely the strength of mās law, but also of the law of reason, or of the law of god whereof it is deriued, for laws made by mā which haue receiued of god power to make lawes, be made by God. And therefore cōscience must be ordred by that lawe, as it must be vpon the law of god & vpon the law of reason. And furthermore ꝑ lawe whereof mention is made in the latter end of ꝑ chapter next before, that is to say, in that question wherein it is asked where the law is to be left and forsaken for cōscience, is not to be vnderstande of the lawe of reason, nor of ꝑ law of God: for the two lawes may not be left, nor it is not to be vnderstād of the law of mā that is made in particuler cases, and that is consonant to the law of reason, and to the law of god, and that yet that law should be left for conscience, for of such a lawe made by mā, cōscience must be ruled, as it is sayd before, nor it is not to be vnderstād of a lawe made by mā cōmāding or ꝓhibiting any thing to be dōe that is against ꝑ law of reason, or ꝑ law of god

For

For if any law made by man, binde any person to any thing ꝑ is against ꝑ said lawes, it is no lawe, but a corruption and a manifest errour. Therefore after them ꝑ be learned in the lawes of England, ꝑ said question: that is to say where the law is to be left for cõscience, & where not, is to be vnderstand in diuers maners, and after diuers rules as hereafter shall somewhat be touched.

¶ First many vnlearned persons beleue that it is lawful for them to vse with good conscience al things which if they do them, they shall not be punished therefore by ꝑ lawe, though ꝑ lawe doth not warrant them to do that they doe, but onely when it is done doth not for some reasonable cõsideration punish him that doth it, but leaueth it only to his cõscience. And therefore many persons oft times that they should not doe, & keepe as their owne ꝑ, that in conscience they ought to restore. Wherefore there is in the lawes of England this case,

¶ If two mẽ haue a woode iointly, and ꝑ one of them selleth the woode & keepeth all ꝑ money wholy to himself: In this case his fellow shall haue no remedy against him by the lawe, for as they when they toke ꝑ woode iointly, put eche other in trust, and were cõtented to occupy together, so ꝑ lawe suffreth them to order the profits thereof according to ꝑ trust that eche of them put other in. And yet if one take all ꝑ profits, he is bound in cõscience to restore the halfe to his fellowe, for as the lawe giueth him right only to halfe ꝑ land, so it giueth him right only in con-

science

science to ꝑ halfe profits. And yet nevertheles it cannot be said in ꝑ case, that ꝑ law is against conscience, for the lawe neither willeth ne commaundeth that one should take al ꝑ profits, but leaueth it to their conscience, so that no default can be found in the lawe, but in him that taketh al ꝑ profits to himselfe may be alligned default, which is holde in cõscience to reforme it, if hee wil saue his soule, though he cannot be cõpelled thereto by the lawe. And therefore in this case and other like ꝑ opinion which some haue, that they may do with conscience, al that they shall not be punished for by the lawe if they doe it, it is to be left for conscience, but the law is not to be left for conscience.

¶ Addition.

¶ Also many men thinke ꝑ if a man haue land that another hath title to, if he ꝑ hath the right shall not by the action that is geuen him by the lawe to recouer his right by, recouer damages, that thẽ he that hath the land is also discharged of damages in conscience, & that is a great error in conscience, for though he cannot be compelled to yelde the damages by no manes lawe, yet hee is compelled thereto by the law of reason, & by the law of God, whereby we be bound to do as wee would be done to, and ꝑwe should not couet our neighbors good, and therefore if tenant in taile be disseased & the disseisor dieth seised, & thẽ ꝑ heire in ꝑtaile bringeth a formedon & recouereth ꝑ land & no damages, for ꝑ lawe geueth him no damage in that case, yet the tenãt by discõtinuance is bounde to yeeld damages to the heire in tail frõ ꝑ death

of his auncester. Also it is taken by some men, ꝑ the law must be left for cõscience where ꝑ lawe doth not suffer a mã to deny that he hath before affirmed in court of recorde, or for that hee hath wilfully excluded himself therof for some other cause, as if the daughter ꝑis onely heire to her father, will sue livery with her sister that is a bastard, in ꝑ case she shall not bee after received to say that her sister is a bastard, in so much ꝑ if her sister take halfe the lãd with her, there is no remedy against her by ꝑ law. And no more there is of diuersity in other estoppels, which were to lõg to reherse now. And yet the party that may take auantage of such an estoppel by the law, is bound in cõscience to forsake that aduãtage, specially if he were so estopped by ignorance, & not by his own knowledge & assent, for though the law in such cases geueth no remedy to him that is estopped, yet the law iudgeth not that the other hath right vnto the thinge that is in variance betwixt them.

Also it is to vnderstand that the law is to be left for conscience, where a thinge is tryed and found by verdict against the truth, for in ꝑ common law the iudgemẽt must be geuen according as it is pleaded and tried, like as it is in other lawes, that ꝑ iudgemẽt must be geuen according to that, that is pleaded and proued.

And it is to be vnderstãd ꝑ the law is to be left for cõscience, where ꝑ cause of the law doth cease, for whẽ the cause of the lawe doth cease, ꝑ lawe also doth cease in cõscience, as appereth by this case hereafter following. ¶ Addition.

A man maketh a leale for terme of life & after a straunger doth wast, wherefore plaintiff bringeth an action of Trespas & hath iudgement to recouer damages, hauing regard to the treble damages that he shal yeld to him in the reuersion. And after he in the reuersiō before actiō of wast sued, dieth: so that the action of wast is thereby extincted, then ỹ tenāt for terme of life (though he may sue execution of ỹ said iudgement by the law) yet he may not do it by conscience, for in conscience he may take no more thē he is hurted by the said trespas, because he is not charged ouer with the treble damages to his lessour.

Also it is to vnderstād where a lawe is groūded vpon a presūption, ỹ if the presūptiō be vntrue, then the law is not to be holden in conscience. And now I haue shewed thee somwhat how ỹ questiō, that is to say where ỹ lawe shal be ruled after conscience. I pray thee shew me whether there bee not like diuersities in other lawes, betwixt lawe and conscience. D. Many hereby, very many wherof thou hast recited one before, where a thing that is vntrue is pleaded, & proued, in which case iudgement must bee geuen according as wel in the lawe Ciuile, as in the lawe Canon. And an other case is, ỹ if the heire make not his inuentory, he shal be bounde after the law Ciuile to al the debts though the goods amount not to so much. And the law Canon is not against that lawe, and yet in conscience the heire which in the lawes of Englande is called an executor is not in ỹ case charged to the debts, but according to ỹ value of the goods.

And now I pray thee shew me some cases wher cõscience shall be ruled after the lawe. &c. I will with good will shew thee somewhat as me thinketh therein.

¶ Here followeth diuers cases where cõscience is to bee ordred after the lawe.

## The xx. Chapt.

The eldest sonne shall haue and enioy his fathers landes at the common lawe in conscience, as he shal in ỹ lawe. And in Burghenglish the yonger sonne shal enioy the inheritance, and ỹ in cõscience. And in Gauelkind al the sonnes shal inherite the land together as daughters, at the common law & that in conscience. And there can be none other cause alligned why conscience in the first case is with the eldest brother, and in the second with the yonger brother, and in the third case with all ỹ brethern. But because the lawe of England by reason of diuers customes doth sometime geue the lãd wholy to the eldest sonne, sometime to yongest, and sometime to all.

¶ Also if a man of his mere motion make a feffemẽt of two acres of land, lying in two seuerall shires, & maketh liuery of season in the one acre in the name of both. In this case the feffee hath right but only to ỹ acre whereof liuery of seasin was made, because he hath no title by the lawe: but if both acres had ben in one shire he had had good right to both. And in these cases ỹ diuersity of ỹ lawe maketh the diuersity of conscience.

¶ Also

Also if a man of his mere motion make a feoffement of a manor, & saith not to haue & to hold &c. with the appurtenances, in that case ꝑ feoffee hath right to the demesne landes & to the rentes if there be attornement & to the common pertaining to the manor, but he hath neither right to ꝑ aduowsons appendant if any be, nor to the villeins regardant, but if this were with the appurtenances, had done in the deede, ꝑ feoffee had right in conscience alwel to the aduowsons & villeins as to the residue of the manor, but if ꝑ king of his mere motiõ geue a manor, with the appurtenances, yet the donee hath neither right in law nor conscience to the aduowsons nor villeins. And ꝑ diuersity of the law in these cases maketh the diuersities of consciences.

Also if a mã make a lease for terme of yeres yelding to him and to his heires a certaine rent vpon condition, ꝑ if the rent be behinde by xl. daies next after it shalbe lawfull to the lessour & his heirs to reenter. And after the rent is behinde, the lessour alleth the rent according to ꝑ law & yet it is not paid, the lessour alleth his heires entreth, for this cause his entre is tortious both in law & conscience: but if the lessour had died before he had demaunded the rent, & his heire demaunded the rent, & demaunt it is not paid he reentreth in ꝑ case his reentre is not tortious neither in law nor in conscience.

Also if the tenãt in dower sole or her land & die before ꝑ corne be ripe, the corne in conscience belõgeth to her executors, & not to him in ꝑ reuersion, otherwise it is in conscience of gentle ꝑ fruites

fruites. And the diuersity of the case maketh there also the diuersity in conscience.

Also if a man seised of landes in fee simple, as of fee, bequeth the same by his last will to another and to his heires, & dieth: In this case the heire notwithstandinge the will hath right to the land in cõscience. And the reason is, because the law iudgeth that will to be voide, & as it is voide in the law, so is it voide in conscience.

Also if a man graunt a rent for terme of life & make a lease of land to y same graunte for terme of life, & he that alieneth both in fee: In this case he in the reuersion hath good title to haue both in law and conscience, & not to the rent. And the reason is because the land by the alienation is forfeit by y law to him in the reuersion and not the rent.

The Addition.

Also if landes be geuen to two men and to a woman in fee, & after one of the men entermarieth with the woman, & alieneth the land and dieth: In this case the woman hath right but onely to the third part, but if the man & the woman had been seised together before the first feoffment, then the woman notwithstanding the alienation of her husband should haue had right in law and conscience to the one halfe of the land. And so in these two cases cõscience doth follow the law of the realme. Also if a man haue two sons, one by a first wife, & another by a second wife, and after the father dieth seised of certaine landes: In this case the yõger sonne shall enioy the landes in the certaine as heire to his father both

both in law & cõscience. And ye cause is because ye sõne born after espousels, is by ye law of this realme ye very heire, & ye elder sõne is a baskard. And of these cases & many other like in ye lawes of England may be formed ye Silogisme of cõscience or the true iudgemt of cõscience in this maner. Sinderesis ministreth the maior thus. Right wisenes is to be vse to euery mã, vpon which maior ye law of Englãd ministreth the minor thus. The inheritãce belõgeth to ye sõne borne aft espousels, & not to ye sõne born before espousels: the conscience maketh the cõclusion, & sayth: therfore ye inheritãce is in cõscience to be geue to the sõne borne aft espousels. And so in other cases infinite may be formed by the law ye Silogisme or the right iudgemẽt of cõscience, wherefore they that be learned in the law of ye realm say ye in euery case where any law is ordeined for ye dispositiõ of lands & goods, which is not against the law of god, nor yet against ye law of reason, that the law bindeth al thẽ that be vnder the law in the court of conscience, that is to say, inwardly in his soule. And therfore it is no what to marueil that spirituall men haue not indeuored thẽselues in times past to haue more knowledge of ye kings lawes ths they haue doe, or that they yet do, for by ignorance they of they be oft times ignorant of that ye shoulde order ths according to right & iustice, aswel cõcerning thẽselues as other that cõe to them for counsail. And now for asmuch as I haue answered to thy questiõs as wel as I cã: I pray ths yt thou wilt shew me thy opinion in diuers

cases formed vpon the law of England wherin I am in doubt, what is to be holden therein in conscience. D. Shewe me thy questions & I will say as me thinketh therein.

¶ The first question of the student.

¶ The xxj. Chapiter.

IF an infant that is of the age of xxj yere and hath reason and wisedome to gouerne hymselfe selleth his lād, & vō the money therof bu-eth other lād of greater value thē the first was & taketh the profits thereof. whether may that infant aske his first land againe in cōscience, as he may by the lawe. D. what thinkest thou in that question. S. Me semeth that forasmuch as the law of England in this article is grounded vpon a presumption, that is to say, that infāts commonly afore they be of the age of xxj. yeres be not able to gouerne themselfe, that yet for al-much as that presumption faileth in this infāt that he may not in this case with cōscience aske the lande againe that he hath sold to his great auauntage as before appeareth. D. is not thys tale of the infant & the fessement made therupō if any were, boydable in the lawe. S. Yes verely D. And if the fessee haue no right by the bargaine, nor by the fessement made thereupon wherby should hee then haue right thereto as thou thinkest. S. By conscience as me thinketh, for the reaō that I haue made before. D. And vpon what law should that conscience be grou-

grounded, that thou speakest of, for it cannot be grounded by the law of the realme, as thou hast saied thy selfe. And me thinketh that it cannot be grounded upon ỹ law of god, nor upō ỹ lawe of realō, for feoffements nor contracts bee not grounded upon neither of those lawes, but upō the law of man. D. After the law of propertye was ordeined the people might not conueniētly liue together without contracts, & therefore it seemeth that cōtracts be grounded upon ỹ law of reason, or at least upon the law that is called Ius gentiū. D. Though contracts be grounded upon that law that is called Ius gentium, because they be so necessary and so generall among al people, yet that proueth not that contractes be grounded upon the law of realō, for though ỹ law called Ius gentium bee much necessary for the people yet it may be chaūged. And therefore if it were ordeined by statute ỹ there should be no sale of lād, ne no cōtract of goods, and if any were, that it should be voide, so that euery man should cōtinue stil seised of his lāds & possessed of his goods, the statute were good. And then if a mā against that statute sold hys land for a summe of money, yet the seller myght lawfully retaine his land according to the statute. And then he were bounde to no more but to repay the money that he receyued with reasonable expēces in that behalfe, and so in likewise me thinketh that in thys case the infant may with good conscyence reuerter into hys first lande, because the contract after the Maximes of the lawe of the Realme is voyde, for

as I haue heard ꝑ maximes of the lawe be of as great strength in the lawe as statutes. And sō thinke ꝑ in this case the infant is bound to no more, but only to repay the money to him that he sold his lād vnto, with such reasonable costes and charges as he hath sustained by reasō of ꝑ same. But if a man sel his land by a sufficiēt & lawfull contract, though there lacke liuery of seisō or such other solempnities of the lawe, yet the seller is bound in conscience to performe ꝑ cōtract, but in this case ꝑ contract is insufficient, & so me thinketh great diuersitie betwixt the cases. S. For this time I hold me cōtent with thy opinion.

## ¶ The second question of the Student.

### The xxij. Chapiter.

I F a man that hath lande for terme of life be impanelled vpon an inquest, & thereupon leseth issues & dieth, whether may those issues be leuied vpon him in the reuersion in conscience they may be by the lawe. D. If they may be leuied by the lawe, what is ꝑ cause why thou doubt whether they may be leuied by conscience. S. For there is a maxime in ꝑ lawes of England, that where two tytles runne together, eldest title shalbe preferred. And in this case the title of him in the reuersiō is before the title of the forfeitures of ꝑ issues. And therfore I doubt for what whether they may be lawfully leuied

D

D. by that reason it seemeth thou art in doubt what the law is in this case, but that must necessarily be knowen, for els it were in vaine to argue what cõscience wil therin. S. It is certain ꝑ the law is such, & so it is likewise if the husband forfeit illues, & die, those illues shal be leuied on the lands of the wife. D. And if the law be such, it seemeth that conscience is so in likewise, for eth it is the law ꝑ for execution of Iustice euery man shalbe impanelled who nede requireth it seemeth reasonable, ꝑ if he will not appeare ꝑ hee should haue some punishment for his not appearance: for els the lawes should bee clerly frustrate in ꝑ point. And the paine as I haue heard is ꝑ he shal leese illues to ꝑ king for his not appearance, wherefore it seemeth not inconuenient nor against cõscience, though ꝑ law be ꝑ those illues shalbe leuied of him in the reuersion, for that the condition was clerly vnderstãd in the law to passe in the leese when the lease was made. And therfore it is for the lessor to beware & to preuent ꝑ daunger at the making of the lease, or els it shalbe adiudged his owne default. And thõ this ꝑticuler maxime wherby such illues shalbe leuied vpon him in ꝑ reuersion is ꝑticuler exceptiõ in ꝑ lawes of England fro ꝑ general maxime ꝑ thou hast remembred before, ꝑ is to say, that where ꝑ titles run together, that the oldest title shalbe ꝑferred, & so in this case the general maxime in this point shal holde no place neither in law nor in cõscience, for by this ꝑticuler maxime the strength of ꝑ general maxime is restrained to euery intent, that is to say ꝑ wel in law as in conscience.

The

# The xj. Chapiter.

## ¶ The third queſtion of the ſtudent.

## ¶ The xxiij. Chapiter.

IF a tenaunt for terme of life, or for terme of yeres doe waſt whereby they be bound by the lawe to yeld to him in the reuerſion treble damages, & ſo ſhall forfait ꝑ place walted, whether is he alſo bound in conſcience to pay thoſe damages, & to reſtore ꝑ place walted immediatly after the waſt doē, as he is in ꝑ ſingle damages, or ꝑ he is not bound therto til ꝑ treble damages, & place walted, be recouered in ꝑ kings court? D. Before iudgement geuen of the treble damages & of ꝑ place walted he is not bound in conſcience to pay them. For it is vncertain what he ſhould pay, but it fortileth ꝑ he be redy til iudgement be geuē to yelde damages according to ꝑ value of ꝑ waſt, but after ꝑ iudgement geuen, he is bound in conſcience to yeld ꝑ treble damages, & alſo the place walted. And the ſame lawe is in al ſtatuts penal, ꝑ is to ſay, ꝑ no man is bound in cōſcience to pay the penalty til it be recouered by the law. S. whether may he that hath offended againſt ſuch a ſtatute penal defend the action and hinder the iudgement to the intēt he would not pay ꝑ penalty, but only ſingle damages. D. If the action be taken rightwiſely according to the ſtatute and vpon a iuſt cauſe, the defendaunt may in no wiſe defend the action, vnleſſe he haue a true dilatory matter to pleade, which ſhoulde be hurtfull to him if he pleaded not, though he be not bound to

to pay the penalty till it be recouered.

## ¶ The fourth question of the Student.

### The xxiiij. Chapter.

If a man enfeffe other in certaine lande vpon condition that if he enfeffe any other: that it shalbe lawful for the feoffour and his heires to enter &c. Whether is this cõditiõ good in cõscience though it bee voyde in the lawe. ℣. What is the cause why this cõdition is void in ỹ lawe. ℟. The cause is this, by the lawe it is incident to euery state of fee simple, that he that hath the estate, may lawfully by the lawe & by the gift of ỹ feffor, make a feffement therof. And then whẽ the feffor restraineth him after, ỹ he shall make no feffemẽt to no man against his owne former graunt, & also against the purity of the state of a fee simple, the lawe iudgeth the condition to be void, but if the condition had ben, that he should not haue enfeffed such a man, or such a man, that condition had bene good, for yet he might infeffe other.

℣. Though the said condition bee against the effect of the state of a fee simple, and also against the lawe. Neuertheles it is not against the intent that the parties agreed vpon, & that at the time of the liuery. And for almuch as the intẽt of the party was, that if the feffee infeffed any man of the lande, that the feffour shoulde enter, and to that intẽt the feffee vsed the state and

after

after breake the intent, it seemeth ỳ the lande in
conscience should returne to ỳ feoffour. ℌ. The
intent of the parties in the lawes of Englande
is void in many cases, that is to say, if it be not
ordred according to the law. And if a mā of his
mere motion without any recompence intēding
to geue landes to an other, & to his heires make
a deede vnto him, whereby hee geueth him the
lands, to haue and to hold to him for euer, intē-
ding that by ỳ word (for euer) the feffee should
haue the land to him & to his heires, in this case
his intent is voide, and the other shall haue the
lād only for terme of life. Also if a mā geue lāds
to another & to his heires for terme of xx. yeres,
intending ỳ if the feffee dye within the terme ỳ
thē his heires should enioy the lande during the
terme: In this case his intēt is voide, for by the
law of the realme al chattels real and personall
shal go to the executors, and not to ỳ heire. Also
if a man geue lands to a man and to his wife, &
to the third parson, intending ỳ euery of them
should take the third part of the lande as .ij. cō-
mon parsons should, his entent is voide for the
husband & the wife as one person in ỳ law shall
take only ỳ one halfe & the iij. person the other
half, but these cases be alway to bee vnderstand
where the said estates be made without any re-
compence. And for almuch as in this principal
case, the intent of the feoffour is grounded a-
gainst the lawes, and that there is no recopence
appointed for the feoffement: me thinketh that
the feoffour hath neither right to the lande by
law or cōscience, for if he should haue it by cōsci-

ence

ence that cõscience should be grounded vpon the law of reason & that it cannot, for cõditions be not grounded vpon the law of reason, but vpon the maximes & customes of the realme, & therefore it might be ordeined by statut, ỹ al cõditiõs made vpon land should be voide. And whẽ a cõdition is voide by the maximes of the law, it is as fully void to euery entent, as if it were made voide by statute, & so me thinketh ỹ in this case the feffour hath no right to the land in law nor in cõscience. D. I am content thy opinion stãd till wee shall haue hereafter a better leyfure to speake farther in this matter.

## ¶ The first question of the Student.

### The xxvi. Chapter.

IF a fine with Proclamation be lenied according to the statute, and no claime made within fiue yeres &c. whether is the right of a straunger extincted thereby in cõscience, as it is in the law. D. Vpon what consideration was that statute made. S. That the right of lands and tenements might be the more certainely knowen & not to be so vncertaine as they were before that statute. Doctour. And when any law of man is made for a cõmon wealth, or for a good peace & quietnes of ỹ people, or for any inconuenience or hurt to be saued from them, that law is good, though percase it extincte the ryght of a straunger, and must bee kept in the Courte of con-

conscience, for as it is said before in ỳ iiij. Chapter. By lawes rightwisely made by man, it appeareth who hath right to ỳ landes & goods, for whatsoeuer a mā hath by such a lawe hee hath it rightwisely. And whatsoeuer he holdeth against such a lawe he holdeth vnrightwisely, and furthermore as it is sayd there, all lawes made by man which be not contrary to the lawe of God must be obserued & kept, and that in conscience.

And he that displeseth them, displeseth God & hee that resisteth them, resisteth God, also it is to be vnderstand, that possessions, and the right thereof be subiect to ỳ lawes, so that they therefore with a cause reasonable may be trāslated & altred from one man to another, by the act of the lawe. And of this cōsideration ỳ lawe is grounded that by a cōtract made in faires & markets, the property is altered, except ỳ property be to the king, so that ỳ buier pay toll, or doe such other things as is accustomed there to be done upon such contracts, & that ỳ buier knoweth not the former property. And in ỳ lawe C. iuste there is a like lawe, that if a man haue another mans good with a title 3. yere, thinking that he hath right to it, he hath the very right vnto ỳ thing, and that was made for a lawe to the entent that the property & right of thigs should not be vncertaine: and that variance and strife should not bee amonge the people. And forasmuch as the saide statute was ordeyned to geeue a certaine type of title in the landes and tenementes comprised in the fine. It seemeth that that fine extincted the tytle of all other, as well as

conscience as it doth in ꝑ lawe. And sith I haue answered to thy question: I pray thee let me knowe thy minde in one question cõcerning tailed landes, & then I will trouble thee no farther at this time.

¶ A question made by the doctour, howe certein recouries that bee vsed in the kinges courts to defete tailed land, may stand with conscience.

## The xxvj. Chapter.

I haue heard say that when a man that is seised of landes in the taile selleth the lande. That it is commonly vsed that he ꝑ buieth the land shal say his surety, & for ꝑ auoiding of the taile in thee behalfe, cause some of his frendes to recouer the said landes against the said tenant in taile: which recouery as I haue bene credibly enformed shalbe had in this maner: ꝑ demaundes that supose in their writ & declaration ꝑ tenant hath no entre, but by such a straunger as the buier shal will to name & appoint, where in deede the demaundaunt neuer had possession thereof nor yet ꝑ said straunger. And thereupon the said tenant in taile shall appere in the court, & by assent of the parties, shal vouch to warraint one ꝑ knoweth wel hath nothing to plede in bar. And ꝑ vouchee shal appeare & ꝑ demaundes shal declare against him, and thereupon he shal take a day to emparle in the same terme and at that day by assent & couen of the parties

he shal make default, vppon which default be-
cause it is a default in delyppte of the court, the
demaundantes shal haue iudgement to recouer
against the tenant in taile, and he ouer in value
against the vouche, and this iudgement and re-
couerie in value, is taken for a barre of the taile
for euer, how may it therfore be taken that the
law standeth with conscience, that as it semeth
alloweth & fauoureth such fained recoueries.

M. If the tenaunt in tayle sell the lande for a
certayne summe of money as is agreed betwixt
them at such a price as is cõmõly vsed of other
lands, & for the suerty of the sale suffereth such
a recouery as is afore sayde, what is the cause
that moueth thee to doubt whether the sayde
tract or the recouery made therupon, for ỹ se-
curty of the buier that hath truly paid his mony
for the same, should stand with conscience.

M. Two thinges cause me to wubte therin,
one is for that, ỹ after our Lord had geuen the
land of behest to Abraham & to his seede, ỹ is to
say, to his childre in possessiõ alway to cõtinue
he said to Moyses as it appeareth Leuit. xxv.
the land shal not be sold for euer, for it is mine,
And then our Lorde assigned a certayne maner
how the lande might bee redemed in the yeare
of Jubile if it were sold before: and forasmuch
as our Lorde wolde that the lande so geuen
to Abraham and his children should not be sold
for euer, it semeth that he doth against the ex-
sample of God, that alieneth or selleth the land
that is geuen to him and to his childre as lande
promised be geuen.

Another

Another cause is this: it appeareth by the commaundement of God that thou shalt not couet the house of thy neighbour &c.

And if that cõcupiſcẽce be prohibited, more strõger thẽ the vnlawful taking & wholding there of is prohibited: and for asmuch as rayed land when the auncester is deade, is a thinge that of right is belonginge to his heire for that hee is heire according to the gift, howe may the land with right or conscience be holden from him.

S. Notwithstandinge the prohibition of almighty God: whereby the land that was geuen to Abraham and to his seede myght not bee aliened for euer, yet lãds within walled townes might lawfullye be aliened for euer except the lands of the Leuites, as it appeareth in the said Chapter of Leuitici xxv. And so it appeareth ỹ the said prohibition was not general for euery place and that amonge the Iewes. And it appeareth also that it was geuen only for Abraham and his childrẽ, and so it was not general to al people. And it appeareth also that it extended not but onely to the lande of promission as it appeareth by the wordes of the said Chapiter, where it is said thus, al the regyon of your possession shalbe sould vnder the conditiõ of redeming, where by appeareth ỹ lands in other countries bee not bound to that condition, and as they bee not bounde to that condition: by the same reasõ it followeth that they be not bounde to the same succession. Therefore that said saw that will that the land geuen to Abraham & to his seede shal not be solde for euer

bindeth no land out of the land of promission, & some men wil say, that vthen the passion of our Lord was promulgate and knowen, it bindeth not there. And to the seconde reason which is grounded vpon the cõmaundement of God. It must needes be graunted ꝑ it is not lawfull to any man vnlawfully to couet the house of his neighbour, & that thẽ more stronger he may not vnlawfully take it from him: but thẽ it remaineth for thæ yet to prone how in this case this tailed lande that is solde by his auncester, and wherof a recouery is had recorded in the kings cour, may be said ꝑ lands of the heire. D. That may be proued by the law of the realme, that is to say by the statut of westminster ꝑ second the first chapter, where it is said thus, The will of the geuer expressely cõtained in the dæde of his gift, shalbe from henceforth obserued: so ꝑ they to whom the tenementes bee so geuen shall not haue power to alien, but that the landes after their death shal remaine to the issue or retourne to the donoure if the issue fayle, by the which statute it appeareth euidẽtly that though they to whom the tenements were so geuen, aliened them away, that yet neuertheleſſe they in law and cõscience by reason of the said statut ought to remayne to their heires accordinge to the gift, for it is holden commonly by all Doctours that the commaundements and rules of the lawe of man or of a positiue lawe that is lawfully made, bynde all that bee subiecte to that lawe accordinge to the mynde of the maker, and that in the court of conscyence.

S. Doest thou thinke that if a man offende a-gainst a statute penal that hee offendeth in con-science? admitte that he doe it not of a wilful disobedience for that he wil not obey the lawe, for if he doe it of disobedience I thinke he of-fendeth. D. If it be but onely a statute that is called Popularе, it bindeth not in conscience to the payment of the penaltie, tyll it be reco-vered by the lawe. And then it doth bynd in conscience, but if a statute be made principally to remedye the hurt of one party, and for that hurt it geueth a penalty to the partie, in that case the offendour of the statute is bounde im-mediatly to restore the damages to the value of the hurte: as it is vpon the statute of Wast, but the penaltie aboue the hurt he is not bound to pay till iudgement bee geuen as it is sayde before; but statutes by the which it is assig-ned who shall haue right or propertie to theie landes and tenements, or to theis goods or cat-tels, if it be not against the law of God nor a-gainst the lawe of reason, binde al them that be subiect to the law, in law & conscience, & such a statute is the statute of westm. 2. whereof wee haue treated before, wherefore it must bee ob-serued in conscience.

S. But some holde that the statute of West-minster the seconde was made of a singularity and presumption of many that were at the Lad plamet for exaltig & magnifyng of their own bloud, & therfore they say that y statute made by such a presumption bindeth not in conscience

D. It is very perilous to indge for certeyne that the said statute was made of such a presumptiō as thou speakest of, for there be many considerations to proue that the saide statute was not made of such presumption, but rather of a very good minde of al the parlyament, or at the leaste of the more part thereof, and for the common wealth of all the realme, and fyrste in the king the which in the said parliament was the heade and moste chiefe and principall part of the parliament (as he is in euery parliament) cannot be noted no such entent. For it is not necessary nor it was not then in ble, that lāds of the Crowne should be entailed, and in spyritual men ne yet in certeine Burgeles & Cytizens of the said parliamt which at that time had no land, there can be noted no such singularitie, nor yet in the noble men and gentlemen nor such other as were of the saied parliament and hadd landes and tenementes. It is not good to iudge in certeine that they did it of such a presumptyon, but it is good and expedyent in this case as it is in other cases that be in doubt to holde the surer way, and that is that it was made of charitie, to that intent that he nor the heires of him to whom the lande was geuen should not fall into extreme pouertie, and there by happely to runne into offence against God, and though it were true as they saye that it was not made of charytie but of presūptyon & singularitie as they speake of: Neuertheles for as much as the statute is not against the law of god nor against the law of realō, it must

be

be obserued by al them that be subiectes vnto that lawe. For as John Gerlon saith in ꝑ treatice ꝑ he intituled in latin. De vita spirituali animæ the fourth lesson, & ꝑ third corolary: saith that God wil that makers of lawes iudge onely of outward things and reserue secret thinges to him. And so it appeareth that manne may not iudge of the inward intent of the deede, but of such thynges as be apparaunt and certeine, but yt is not apparant that there was any such corrupt intent in the makers of the said statut, how may it therefore be said that that lawe is good or right wysle, ꝑ not onely suffereth such thinges against the statute, but also against the commaundement of God. S. To that some aunswere & say, that when the lande is solde & a recouerie is had therupon in the kings court of record, ꝑ it sufficeth to barre ꝑ taile in conscience, for they say that as ꝑ taile was first ordeined by ꝑ law, so they say that by the lawe it is annulled againe. D. Be thou thy selfe iudge if in that cale there be like authority in ꝑ making of ꝑ taile, as there is in ꝑ annulling thereof, for it was ordeined by authority of parlament, the which is alway take for ꝑ most high court in this realme before any other, & it is annulled by a false suppolel, for ꝑ, that they ꝑ be named demaundantes should haue right to the lande where in trouth they had neuer right thereto, wherupō followeth a false suppolel in ꝑ writ, & a false suppolel in ꝑ declaratiō & a voucher to warrant by couin of such a person as hath nothinge to yelde in value, & therupon by couin

& collusion of ꝑ parties followeth ꝑ default of the vouche, by the which default the iudgemẽt shalbe geuen. And so al the iudgement is deriued and grounded of the vntrue supposal & ruin of ꝑ parties, wherby the law of the realme ꝑ hath ordeined such a writ of entre to help the ꝑ haue right to lads or tenemẽts is defrauded, the court is deceiued, ꝑ heire is disherited, & as it is to doubt, the buier & ꝑ seller & their heires and assignes hauing knowledge of ꝑ tayle be bound to restitutiõ, & verely I haue heard many times, ꝑ after ꝑ law of the realme such recoueries should be no barre to ꝑ heire in ꝑ taile, if the law of the realme might be therein indifferently heard. D. I cõnot see but ꝑ after ꝑ law of the realme it is a barre of the taile, for when ꝑ tenant in taile hath vouched to warrãtie, & the vouchee hath appeared & ẽtred into ꝑ warranty, & after hath made default in delayte of ꝑ court, whereupon iudgement is geuẽ for ꝑ demaundant against ꝑ tenãt, & for ꝑ tenãt ꝑ he shal recouer in value against ꝑ vouchee, if the heire in ꝑ taile should after bring his formedõ & recouer ꝑ lads ẽtailed, & after ꝑ vouche purchaseth lands, then should the heire also haue executiõ against him to ꝑ value of the lands entailed as heire to his auncestor ꝑ was tenant in the first action, & so he should haue his owne lads, & also the lands recouered in value, & therfore because of ꝑ ꝓsumptiõ that ꝑ vouche may purchase lads after ꝑ iudgemẽt, some be of opinion that it is in the law a good barre of the tayle.

D. I suppose that in that case thou hast put

that the bouche may barre the heire in taile of his recouery in value because he hath recouered the first landes. Neuertheleſſe I will take a reſpit to be aduiſed of that recouery in value. And if thou can yet ſhewe me any other cõſideration why the ſaid recoueries ſhould ſtand in conſcience, I pray the let me heare thy cõceipt therin, for the multitude of the ſaid recoueries is ſo great that it were great pity that al ſhoulde be bound to reſtitution that haue landes by ſuch recoueries, ſith there is none that (as farre as I can heare) diſpoſeth them to reſtore.

D. Some men make an other reaſon to proue that the ſaid recoueries ſhould be ſufficient by the law to auoyde the ſtatute of weſt. then ſ yt they be ſufficient therto, they be ſufficient in cõſcience. D. what is their reaſõ therein. Sd. In the xij. yere of king henry the viij. the xij. chapiter among other things it is enacted, that all recouerers their heires and aſſignes may aduow and iuſtifie for rentes ſeruices, and cuſtomes by them recouered, as they againſt whom they recouered might haue done. And then they ſay that when the Parliament gaue to ſuch recouerers ſuch power to aduowe and iuſtifie for ſuch rentes, cuſtomes, and ſeruices as they recouered, that the intent of the Parliament was that ſuch recouerers ſhould haue right to that, for the which they ſhould aduowe or iuſtifie, for els they ſay that it ſhould be in vaine to geue them ſuch power, & that ye Parliament ſhould elſe be taken in maner as forfeiters of mayntenaunce ſo they ſay that ſuch recouerers by reaſõ of ye

ſaid

ſaid ſtatute haue right by the lawe. D. That ſtatute as it ſeemeth was made onely to geue to the recouerers a fourme to auowe & iuſtifie ſuch which they had not before though they had recouered vpon a good title. And the cauſe why they had no fourme to auowe or iuſtifie before the ſaid ſtatut was, for as much as the recouerers did not by the pretence of their action affirme the poſſeſſion of him or the against whom they recouered, nor claimed not by them, but rather diſaffirmed & diſtroyed their eſtate. And therfore they cannot alledge any continuāce of their title by them, as they may that haue rents or ſeruices, or ſuch other of the graunt of other by deede or by fine. And therefore as it ſeemeth the moſt principal intent of the ſtatute was, that ſuch recoueries ſhould auow & iuſtifie for rents ſeruices and cuſtomes as they ſhould or might doe that had them by fine or deede not hauing any reſpect as it ſemeth whether they recouered againſt tenāt in fee ſimple or in fee taile, nor whether the recoueries were had vpon a rightful title. And therefore as me ſemeth the ſaid ſtatute neither affirmeth nor diſaffirmeth the title of recoueries wherby they do auow, for if a mā had right before the recouery the right ſhould remain vnto him notwithſtanding the ſaid ſtatut, & ſo me ſemeth that the title of them that haue the lands ſtailed by ſuch recoueries is nothing ſtrengthened nor affirmed by the ſaid eſtatute but that they are in the caſe as they were before, what thinkeſt thou therin? Sh. This matter is great for as thou ſaiſt there be ſo many that haue taile

lands

lands by such recoueries, ꝑ it were great pitie and heauines to condempne so many persons & to iudge that they al were bound to restitution. For I think there be but few in this Realme that haue lands of any notable value, but that they or their auncestours, or some other by whom they clayme, haue had parte thereof by such recoueries. In so much that Lords spiritual and temporal, Knightes, Squires, ryche men and powre, Monasteries, Colledges and Hospitals haue such lands, for such recoueries haue bene vsed of longe time, who may thinke therefore without great heauinesse that so many men should be bound to restitution & that yet as thou saiest, no manne disposeth hym to make restitution. And so I am in a manner perplexed & wote not what to say in this case, but that yet I trust that ignorance may excuse many persons in this behalfe.

D. Ignorance of the deade may excuse, but ignorance of the law excuseth not, but it be invincible, that is to say that they haue dōe that in them is to knowe the trouth, as to cōsulte with learned men, & to aske them what ꝑ law is in that behalfe, & if they answer them ꝑ they may do this or that lawfully, thē they be therby excused in conscience, but yet in mans lawe they be not therby discharged, but they ꝑ haue take vponthē to haue knowledge of the law be not excused by ignorāce of ꝑ law, ne no more ar they that haue a wilful ignorāce & that would rather be ignorant then to knowe the trouth. And therefore they wil not dyspose them to

aske

aske any cõsaile in it, & if it be of a thing that is against the law of God or the law of realm, no man shalbe excused by ignorãce, and so there be but few that be excused by ignorannce. S. what thẽ shal we cõdempne so many & so notable men. D. we shal not cõdempne them but we shal shew thẽ their peril. S. Yet I trust their daũger is not so great that they should be bound to restitution. For John Gerson saieth in the said booke called De vnitate ecclesiastica consideratione secunda, quod communis error facit ius That is to saye a common errour maketh a right, of which wordes as it semeth some trust may be had, that though it were fully admitted the said recoueries were first had vpon an vnlawful ground and against the good order of cõscience, that yet neuertheiesse for almuch as they haue bene vsed of long time so that they haue bene taken of dyuers men that haue bene right wel learned, in maner as for a lawe, that the buyers partly be excused so that they be not bound to restitution. And moreouer it is certain that that statute of westm the second, nor none other statute made by manne cannot be of greater value or strength, then was the bond of matrimony that was ordeined of God. And though that bond of matrimony was indissoluble, yet neuertheiesse Moyses suffred a bil of refusel of the Iewes, which in latin is called Libellum repudij, & so they myght thereby forsake their wiues, as it appereth Deutro. xxiij. & therefore like as a dispensation was suffered against that bõd, so it semeth it may be against thys

this statute. D. As to that reason that thou hast last made of a bill of refusel, let all purchasors of land here what our lord saith in ꝑ gospel to the Jewes, of that bill of refusell. Mathew xix. wher he saith thus, for the hardnes of your harts. Moises suffered you to leaue your wiues, for at ꝑ beginnig it was not so, of which words Doctours hold commonly that though such a bil of refusel was lawful so ꝑ they that refused their wiues thereby, should be without paine in the law, that yet it was neuer lawfull in that it should be without sinne. And so likewise it may be saide in this case ꝑ such recouerues be suffered for the hardnes of the hartes of Englishe men, which desire land & possession in so great greedines that they cannot bee wyth drawen from it neither by the law of God nor of the realme. And therfore the riche mē should not take the possessiōs of poore men from thē by power, wout colour of title, that is to say eyther by open disseison, or by the only sale of the tenant in taile, and so to holde them against the expresse wordes of the statute: such recoueries haue bene suffered. And though for their great multitude they may happely be without payne as to the law of the Realme: yet it is to feare that they be not without offēce, as against god, and as to the other reason, that a common error should make a right, those wordes as me semeth ꝑ to be thus vnderstād, ꝑ a custome vsed against ꝑ law of man shalbe taken in some countries for law, if the people be suffered so to cōtinue. And yet some menne call such a customs an errour

because

bꝛcause that the continuance of that custome a-
gainst the law was partly an errour in the peo-
ple, for that they would not obay the lawe
that was made by their superiours to the con-
trary of that custome, but it is to be vnderstād
that the said recoueries though they haue ben
long vied, may not be taken to haue the strength
of a custome, for many as well learned as vn-
learned haue alway spoken against them & yet
doe. And furthermore as I haue heard lay a
custome or a prescriptiō in this realme against
the statutes of the realme preuaile not in the law
S. Though a custōe in this realme preuayleth
not against a statut as to the law, yet it semeth
that it may preuaile against the statute in cōscien-
ce, for though ignorance of a statute excuseth not
in the law, neuertheles it may excuse in consci-
ence & so it semeth that it may doe of a custome.
D. But if such recoueries cannot be brought
into a lawfull custome in the lawe, it semeth
they may not be brought into a custome in con-
science, for conscience must alway be grounded
vppon some lawe, and in this case it cannot be
grounded vppon the lawe of reason, nor vppon
the lawe of GOD: and therfore if the lawe of
man serue not, there is no grounde whereup-
pon conscience in this case may be grounded,
& at the beginning of such recoueries they were
taken to be good because the law should war-
rante them to be good, and not by reason of any
custome, and for if the reason of the lawe will
not serue in the recouerues, the custome can-
not helpe, for an euill custome is to be put a-

way

sway. And therefore me semeth that the recoueries be not without offence against GOD, though happely for their great multitude, and that there should not bee as it were a subuersion of the inheritaunce of many in this Realme as wel of spiritual as temporal, they bee without payne in the lawe of the Realme: excepte such recoueries as by the common course of the lawe be voidable in the lawe by reason of some plee or of some other special matter: but what caine that is I will not temerously iudge, but remit it to the goodnes of our lord whose iugementes be very deepe & profound, nor I will not fully affirme that they y haue lands by such recoueries ought to be compelled to restitutiō, but this semeth to me to be good counsaile, that euery man hereafter hold that is certaine & leaue y is vncertaine, and that is that he kepe himselfe from such recoueries, and then he shalbee free from al scrupulousnes of conscience in that behalfe.

A. It semeth that in this question thou pensest greatly the said statute of Westminster the second, and that though it be but onelye a lawe made by man, that yet for almuch as it is not against the lawe of reason, nor the lawe of GOD, thou thinkest that it must be holden in conscience, and ouer that as it semeth thou art somewhat in doubt whether those recouerye be any barre to the heire in the tayle by the lawe of the Realme, vnlesse that he haue in value in deede vppon the voucher, and that thou

wilt

wilt thereupon take a respite or thou shew thy ful minde therein, and in thy wise thou thinkest as I take it that those recoueries cannot be brought into a custome, but that the longer that they be suffered to continue if they be not good by the law, ỹ greater is the offence against god. And therefore thou pondrest litle that custome but yet thou agreest that it is good to spare the multitude of them that be past, least a subuersion of ỹ inheritãce of many of this realme might folow, and great strife and variance also, if they should be annulled for the time past: except there be any other special cause to auoide them by the law as thou hast touched in the last reason, but thou thinkest that it were good that from hence forth such recoueries should be clearely prohybited & not be suffered to be had in vse as they haue beene before, and thou counsailest all men therfore to refrain themselues from such recoueries hereafter. D. Thou takest well ỹ I haue said, and according as I haue ment it. S. Wel I pray thee, sith I haue heard thy question of these recoueries according to thy desire, ỹ thou wouldest answere me to some particuler questions concerning tailed landes, wherein thou hast at this time geuen vs occasion to speake. D. Shew mee those questions, and I wil there unto my minde therein with good wil.

¶ The first question of the Student concerning tayled landes.

¶ The xxvij. Chapiter.

If a disseisor make a gift in the taile to Iohn at Stile, and John at Stile for the redemig of the title of the disseisy, agreeth with him that he shal haue a certaine rent out of the same land to him & to his heires, & for the suerty of ꝑ rent it is deuised ꝑ the disseisee shal release his right in the lande &c. and that such a recouery as we haue spoken of before, shalbe had against ꝑ said John at Stile to the vse of the payment of the said rent and of the former taile, whether standeth that recouery well with conscience or not as thou thinkest? D. I suppose it doth for it is made for the strength and suerty of the taile which the disseisee might haue clerely defeated & auoyded if hee would, & therefore as I thinke if the said John at Stile had graūted to ꝑ disseisy, only by his dede a certaine rent for the releasing of his title, ꝑ graunt should haue bound the heires in the taile for euer. And then if ꝑ disseisy for his more suerty will haue such a recouery as before appereth, it semeth that recouery standeth with good conscience.

D. It semeth that thy opinion is right good in this matter. And so it appeareth that with a reasonable cause, some speciall recouories may stande both with lawe, and conscience to haue a taile.

## ¶ The seconde question of the Student concerning tayled landes.

The xxviij. Chapter.

IF a tenaunt in tayle suffer a recouery against him of the lands entailed, to the entent ỳ the recouerer shall stand seised thereof to the vse of a certain woma whō he entendeth to take to his wyfe, for terme of life, & after to the vse of the first taile, and after he marieth the same woma, whether lyeth that recouery with cōsciencᵉ, though other recoueries vppon bargaines and sales did not &

A. It seemeth yea, for though the statute be ỳ they to whom the tenemēts be so geuen, should not haue power to alien, but ỳ the landes after their death should remaine to their issues, or reuert to the donors, if the issues failed: yet if he to whom the lands were so geuen take a wife, & dieth seised without heire of his body, & the donour entre, the woma shall recouer against him the third part to hold in the name of her dowry for terme of her life, though ỳ taile bee determined, & the same law is of tenant by the curtesy ỳ is to say, of him that happeneth to marry one is an inheritrix of the land entailed, & they haue issue, the wife dieth, and the issue dieth, he shall holde the landes for terme of his life as tenaunt by the curtesy, notwithstanding the words of the statute, which say that after the death of the tenaunt in taile without issue, the landes shall reuert to the donour, and I thinke the cause is because the intent of that statute shall not be taken, yt entended to put away such rules as the law should geue, by reason of the tayle, and so it seemeth that a like entent of the statute shalbee taken, for in countre, for els the statute

might be sometime a letting of matrimony, and it is not like that ỳ statute intended so, & therfore it seemeth that by the only deede of the tenaunt in taile, a iointour may be made by the intent of the statute, though ỳ wordes of ỳ statute serue not expressly for it, for many times the intent of the letter shalbe taken, & not ỳ bare letter, as it appereth in the same statute, where it is saide ỳ he to whom the lōds be geuē shal haue no powr to alien, yet the same statute is cōstrued that neither he nor his heires of his body shall haue no power to alien, & so me thinketh ỳ such an intent shalbe taken here for saying of ioyntours. ¶. Truth it is, ỳ sometime ỳ intent of a statute shalbe taken farther then ỳ expresse letter stretcheth, but yet there may no intēt be take against the expresse wordes of ỳ statute, for that shoulde be rather an interpretation of the statute thē an exposition, and it cannot be reasonably take, but that the intent of the makers of the said statute was, that the land should remain cōtinually in the heires of the taile as long as the taile endureth, & there can no ioyntour be made neither by deede nor by recouery, but ỳ the taile must there by be discontinued, and therfore this case of iointour is not like to the said cases of tenāt in dower, or tenāt by ỳ courtesy, for ỳ title of dower, and of tenancy by the curtesy groweth most specially by the continuaunce of the possession in the heires of the tayle, but it is not so of ioyntoures, and therefore ỳ the only deede of the tenaunt in the taile, there may no ioyntour be lawfully made against the expresse wordes

of ỹ statute. And if there bee any made by way of recouery, then it seemeth that it must bee put vnder the same rule, as other recoueries must be of lands entayled.

## ¶ The third question of the Student concerning tayled lande.

## The xxix. Chapter.

IF Iohn at Noke being seised of lands in fee, of his mere motion make a feoffement of certaine lands to thintent ỹ the feffees shall thereof make a gift to ỹ saide Iohn at Noke to haue to him and to his heires of his body, and they make the gift accoꝛding. And after the said Iohn at Noke falleth into det, wherefoꝛe he is taken and put in pꝛison, and thereupon foꝛ paiment of his debts, he selleth the same land, & foꝛ warrey of the buier he suffreth a recouery to be had agaīst him in such maner as before appereth, whether standeth that recouery with conscience oꝛ not? D. I would here make a litle digressiō to aske thee another question oꝛ ỹ I make a full weare in thine: that is to say: to feele thy minde how that law by the which the body of the debtoꝛ shall be taken and cast into pꝛison there to remain til he haue paide the debt, may stand with conscience, specially if he haue nothing to pay it with, in as it seemeth if hee will relinquish his goods, which in some lawes is called in Latin Cessio bonis, that he shal not be imꝑisoned, and that is to be vnderstand most specially if he be falle into

pouerty and not through his owne default.

S. There is no law in this realme that the defendant may in any case Cedere bonis, and as mee seemeth if there were such a law, it shoulde not be indifferent, for as to the knowledge of him that the money is owing to, ỹ debtour might Cedere bonis, that is to say, relinquish his goods, and yet retaine to himselfe secretly great ryches. And therefore that law in such case semeth more indifferent and righteous that committeth such a debtor to ỹ conscience of ỹ plaintife to whom the money is owing, then the committing him to the conscience of him that is the debtour, for in the debtour, some default may be alligned, but in him to whom the money is owing may be alligned no default. D. But if he to whom the debt is owig, knoweth that the debtour hath nothing to pay the debt with, & that he is fallen into the pouerty by some casualty, and not through his owne default, both the lawe of England hold, that hee may with good conscience keepe the debtour still in prison till he be paydes. S. Nay verely, but it thinketh mee reasonable to appoint the liberty and the iudgement of conscience in ỹ case, to the debtor tho to the debtor, for the cause before reherced. And then the debtour, if he know the truth, is (as thou hast said) bound in conscience to let him goe at liberty though hee be not compellable thereto by the lawe. And therefore admitting it for this time, that the law of Englande in this point is good and iust, I pray thee that thou wylt make answeare to my question.

W. I will with good will, & therfore as me seemeth, forasmuch as it appeareth that ỳ said gyft was made of the mere liberty & freewill of the said John at Noke, & wout any recõpence, that therfore it cannot be otherwise taken, but that ỳ intẽt of ỳ said John at Noke, as well at ỳ tyme of the said feoffement, as at the time ỳ hee receiued againe the said gyft in the taile, was, that if hee happened afterwardes to fal into pouerty, that he might alien the said land to relefe him w, but how may it be thought that a man will so much ponder the wealth of his heire, that he will forget himselfe, & so it seemeth that not only ỳ said recouery standeth w conscience, but also if hee had made only a feoffement of the lãd, the feoffement should be in conscience a good barre of the taile, but if the said feoffement & gifte had bene made in consideration of any recompence of money or for any maryinony or such other, then the feoffement of the said John at Noke should not binde his heire, & if he the suffred any recouery therof the recouery should be of like effect as other recoueries whereof we haue treated before, & ỳ which I said it was good to fauour rather by their multitude then for the cõscience: & the said law is that if the sonne & the heire of the sayd John at Noke in case that the sayd gifte was made without recompence, alien the lande for pouerty after the death of hys father, the recouery byndeth not but as other recoueryes doe, for it cannot be thought that the intent of the father was, that any of hys heyres in taile should for any necessity dysperyte all other

heires

heires in taile ꝑ shoulde come after him, but for himself me thinketh it is reasonable to iudge in such maner as I haue said before.

S. And though the intent of the said Jhon at Noke when hee made the saide feoffement, and when he toke againe the said gift in taile, were that if hee fell in nede ꝑ he might alien: yet I suppose ꝑ hee may not alien though percase for the more suerty he declared his entēt to be such vpon the liuerie of seasone: for that intent was contrary to the gift ꝑ he freely tooke vpon him. And when any intent or cōdition is declared or reserued against the state ꝑ any man maketh or enterteth: then such an intēt or cōdition is voide by ꝑ lawe, as by a case that hereafter follo weth wil appeare, ꝑ is to say. If a man make a feoffement in fee, vpon condition that the feoffee shall not alien it to any man, that condition is voide for it is incident to euery state of the fee simple that he that is so seysed may alien. And like as in a fee simple there is incident a power to alien, so in a state taile there is a secret intent vnderstand in the gift, that no alienation shalbe made. And therefore though ꝑ entent of the said Jhon at Noke were ꝑ if he fel into pouerty that hee might sel: and though hee at the taking of the gift openly declared hys intent to be so: yet the intent should be voide by ꝑ lawe as me seemeth, and if it be voide by the lawe, it is also voide in conscience, and so the said recouery must bee taken in this case to be of the same effect, as recoueries of other lāds intailed be, & in none other maner.

¶ The fourth question of the student concerning recouuries of inheritances entayled.

¶ The xxx. Chapter.

If an annuity be graunted to a man to haue & to perceiue to the graunte, & to the heires of his body of the rents of his graunt ouer. And after y graunte sufferth a recouery against him in a writ of entre, by the name of a rent in dale of like summe as the annuity is of, with vouchers and iudgement after the common course, & both parties intend that the annuity shall be recouered: whether shal the recouery binde the heire in the tayle of his annuity?

D. What if it were a rent going out of lande: what effect should the recouery be then? S. It should be then of like effect as if it were of lad. D. And so it seemeth to bee of this annuity, for as mee thinketh, a rent, and annuity bee of one effect, for the one of them shalbee payed in ready money as the other shall. S. That is truth, and yet there be many great diuersities betwixt the in y law. D. I pray thee shew me some of those diuersities. S. part I shall shew thee, but I wote not whether I can shew thee al, but first thou shalt vnderstand that one diuersity is this. Euery rent be it rent seruice, rent charge, or rent secke, is going out of lad, but an annuity goeth not out of any laud, but chargeth onely the person, that is to say, the graunt our, or his heires that haue assets by discent,

or the house if it be graunted by a house of religion to perceiue of their cofers. Also of an annuity there lyeth no action, but onely a writ of annuity agaynst the grauntour, his heires, or successours, & that writ of annuity lieth neuer againste the pernour, but only against the grauntour or his heires, but of a rent, the same actiõs may lye, as doe of lande as the case requireth, & it lieth sometime of rent against the tenant of the grand, and sometime against the pernour of the rent, that is to say, against him that taketh the rent wrongfully, & sometime against neither: as of rent seruice, assise may lie for the loyde against the meane & the disseisour, or sometime against the meane only, if he did also the disseasse. Also an annuity is neuer taken for an affecty because it is entreheld in the lande, ne it shal not be put in execution vpon a statute merchant, statute staple, ne elegit as a rent may. And because the sayd writ of entre lay not in this case of this annuity, and that it cannot be entended in the law to be the same annuity, though it be of like summe with the annuity, ne though the parties assised meant to haue the same annuity recouered by the said writ of entre, therefore the said recouery is void in law & conscience, but if such a recouery be had of rent with a voucher ouer then it shalbe taken as beof like effect, as recouueries of landes bee in such maner as ywes haue treated of before.

## ¶ The fifth question of the student concerning tayled landes.

The

## ¶ The xxxj. Chapter.

IF lands be geuen to a man and to his wife in the name of her iointour by ꝑ father of ꝑ husband, to haue and to hold to them & to the heirs of their two bodies begotten, & after they haue issue & the husbande dieth, and the wife alieneth the land, and against the statute of 11. H. 7. suffreth a recouery thereof to be had against her, to the vse of the buier, & after her sone & heire apparant that is heire to the taile releaseth to the recouerers by fine, & dieth hauinge a brother of line, & after the mother dieth, who hath right to the lande, the buier, or ꝑ brother of hym that releaseth? Q. what is thine opinion therin, I pray thee shewe me. A. Me seemeth ꝑ the buier hath right, for by the said statute made in ꝑ 11. yeare of king H. vij. among other things it is enacted that if any woman which hath lands of ꝑ gift of her husband, or of the gift of any of ꝑ auncestours of the husband suffer any recouerie thereof against her by couin, that then such recouery shalbe voide, and that it shalbe lawful to him that should haue the land after the death of the woman to enter, and it to hold as in his first right, prouided alway ꝑ that statute shal not extende where he that should haue the land after ꝑ death of the woman is agreable to any such alienation or recouery, so that ꝑ agrement be of record. And for almuch as the heire in this case agreeth to the said recouery by fine, which is one of the highest records in the lawe, it seemeth that the buier hath right against that heire that agreeth

and

and against all ꝑ shalbe heire of the taile, & that not only by the said recouery, but also by ꝑ said statute, whereby the said recouerie with assent of the heire is affirmed.

D. Though ꝑ buier in this case haue right during the life of the heire that released, yet neuertheles, after his death his heire as it seemeth may lawfully enter, for the agreament whereof ꝑ statute speaketh, must as I suppose either bee had before the recouery, or els at the time of the recouery, for if a title by reason of ꝑ said statute be once denolute to the heire in the taile, then ꝑ right as it semeth cānot be extict nor put away by the only fine of the heire, no more then if he had died & the next heire to him had released to the buier by fine, in which case the release could not extinct ꝑ right of the title, nor the righte of entre ꝑ is geuen by the statute, & so as mee seemeth, his next heire may therefore enter.

S. As I perceiue all thy doubt is in this case because the assent of the heire was after ꝑ recouery, for if it had bene at the time of the recouery, as if the heire had bene vouched to warrant in the same recouery & he had entred, and thereupon the iudgemēt had bene geuen, thou agreest wel, that recouery shoulde haue auoided ꝑ taile for euer.

D. Doctour. That is true, for it is in expresse wordes of the statute, but when the assent is after the recouery, then me thinketh it is not so, me that the right of the firste tayle, whych was reuyued by the sayde statute, shall not be extinct by his fine, no more then it shall in

other

other taile. S. I will be aduised vpon thy opinion in this matter, but yet one thing would I moue further vpon this statute, & that is this: Some say, that by this Statute all other recoueries that haue bene had ouer beside these recoueries of iointours be affirmed, for they say that the pliamēt at the making of this statute knewe well y many other recoueries were thē vsed & had, to defeat tailes, & that it was like they would so continue, which neuertheles the pliament did not prohibite for the tyme to come as it did the said recouery of iointours: that is therefore to suppose that they thought that they should stand with law and conscience: but because iointours were made rather for y saue of the inheritance of the husband, the to defeat the inheritaunce, they say that the Parliament thought & iudged the alienations and recoueries of such iointours to be against the lawes conscience, & not the alienations of other lands entailed, for if they had they say that y pliament would haue auoyded recouueries of tayled lands generally as well as it did of recoueries of iointours. D. Ad to that opinion I will answere thee thus for this time, that though that the makers of the said estatute onely put away recoueries of iointours, and not other recoueries that yet it cānot be taken therfore that their intēt was that the other recoueries should stand good & perfect, for they spake thē onely of iointours because there was no complaint made in the parliamēt at that time, but against recoueries had of iointours, & therfore it semeth that

they

they intended nothing cõcerning othes recoue-
ries, but that they should be of the same effect as
they were before, & no otherwise. And that will
appeare more plainely this, though the makers
of the saide statute intended to put away & ad-
nul such recouueries as should be made of ioyn-
tours after a certaine day limitted in ỹ statute,
that yet they intended not to auoyde ne affirme
such recouueries of iointours as were passed be-
fore ỹ time: and if they intended not to auoyde
ne affirme ỹ recouueries had of ioyntours before
that time, then how can it be take ỹ they inten-
ded to put away, or affirme other recouueries ỹ
were passed before that time, & not of iointours
that would not affirme, ne put away recouueries
passed of iointours before that time. And so as
it seemeth, they intended to spare the multitude
of them that were passed of both, and not to cõ-
straine any to take them after that time. Ma. I am
content thy opinion stand for this time, & I will
aske thee another question.

## ¶ The first question of the stu-
dent concerning tayled
landes.

## The xxxij. Chapter.

If tenant in taile be disseised, and die, & an a-
nother collateral to ỹ heir in taile release with
warranty, and dye, and the warranty descen-
deth vpon the heire in the taile, whether ỹ heir

there

thereby barred in cõscience, as he is in the law.
D. Because your principall intent at this time is to speake of recoueries & not of warranties, & also because it hath bene of long time take for a principal maxime of the law, that it should be a barre to the heires as well ỳ claime by a fee simple, as by state taile, & for that also ỳ it was not put away by the said statute of westm. the second which ordeined the taile, I will not at this time make thee an answeare therein, but will take a respite to be aduised.
S. The I pray thee yet or we depart shew me what was the most principall cause that moued thee to moue this question of recoueries had of tailed lãds. D. this moued mee thereto, I haue perceiued many times ỳ there bee many diuers opiniõs of those recoueries, whether they stand with cõscience or not, & that it is to doubt that many psons run into offẽce of cõscience thereby. And therefore I thought to feele thy minde in them, whether I could perceiue ỳt were clere, ỳ they serued to breake the taile in law and cõscience, or that it were clerely against cõscience so to breake the taile, or that it were a matter in doubt, & if it appeared a matter in doubt, or that it appeared that the matter were vsed clearely against conscience, then I thought to doe somewhat to make the matter appeare as it is, to the intent that they ỳ haue the rule & the charge ouer the people as well, the spirit all menne as temporal men, should the rather endeuour them to see it reformed for the common wealth of the people, as well in body as in soule. For

when

when any thing is vsed to ꝑ displeasure of god it hurteth not only the body, but also the soule. And temporal rulers haue not only cure of the bodies, but also of ꝑ soules, & shal answeare for them if they perish in their default: & because it seemeth by the more aparāt reason ꝑ the tayles be not broke, ne fully auoided by ꝑ said recoueries, & that yet neuertheles the great multitude of them that be passed is right much to bee pondered. Therefore it were very good to prohibite them for time to come, to put away such ambiguities & doubts as rise now by occasion of the said recoueries, & so they be put as snares to deceiue the people, and so will they be as longe as they be suffred to cōtinue. And me thinketh beside ꝑ it were therfore right expedient that tailed lands should from henceforth either be made so strōg in ꝑ lawe ꝑ the tail should not be broke by recouery, fine with proclamation, collateral warranty, nor otherwise: or els that all tayles should be made fee simple, so that euery mā that list to sel his land, might sel it by his bare feffement and without any scruple or grudge of cōscience: and thē there should not be so great expences in the law, nor so great variance among the people: ne yet so great offence of conscience as there is now in many persons. Ed. Verely me thinketh that thy opinion is right good & charitable in this behalf. And that ꝑ rulers be bound in cōscience to loke wel vpō it, so ſe it reformed & brought into good order. And verely by that thou hast said therin thou hast brought me into remembrance that there bee diuers like snares of

con-

cõcerning ſpiritual matters ſuffred amonge the people wherby I doubt that many ſpiritual rulers be in great offẽce againſt god. As it is of ye point that ye ſpiritual men haue ſpoken ſo much of, that prieſts ſhould not be put to anſwer before lay men, ſpecially of felonies & murders, & of ye ſtatute of xlv. E3. ꝑ3. chap. where it is ſaid ye a prohibitiõ ſhal lie where a mã is ſued in the ſpiritual court for tith of wood, yͭ is above yͤ of xx. yere, by ye name of Silua cedua as it hath ben before, & they haue in open Sermons, & in theyr other opẽ cõmunicatiõs & coũſailes cauſed it to be openly notified & knowen, ye they ſhould be al accurſed that put prieſts to anſweare, or maintaine ye ſaid eſtatute, or any other like to it. And after when they haue right wel perceiued that notwithſtãding al that they haue don therin, it hath ben vſed in ye ſame points through al the realme in like manner as it was before: Then they haue ſet ſtil & let ye matter paſſe, & ſo when they haue brought many perſons in great daunger, but moſt ſpecially thẽ ye haue geuen credẽce to their ſaying, & yet by reaſon of the olde cuſtome haue don as they did before, thẽ there they left thẽ, but verely it is to feare that there is to thẽſelues right great offence therby, ye is for to ſay to ſee ſo many in ſo great daunger as they ſay they be. And to doe no more to bring them out of it then they haue done for it, if it be true as they ſay, they ought to ſticke to it with effecte in all charity, till it were refourmed. And if it be not as they ſay then they haue cauſed many to offende that haue geuen credẽce

to them, and yet contrary to their owñ cõsciẽce do as they did before, & that percase should not haue affended if such sayings had not ben. And so it seemeth ỹ they haue in these matters done either too much, or too little.

And I beseech almighty God that some good mã may so call vpon al these matters that wee haue now commoned of, so that they that be in authority may some what ponder thẽ, & take order them in such maner that offẽce of conscience grow not so lightly therby hereafter as it hath done in times past. And verely hee that on the rolle knew the price of mans soule, will hereafter aske a right straight accompt of rulers for euery soule that is vnder them, and that shall perish through their default.

## ¶ Addition.

Thus haue I shewed vnto thee in this little Dialogue how the law of Englãd is groũded vpon the law of reason, the law of GOD, the general customes of the realme, and vppon certein principles that be called maximes, vpõ the particuler customes vsed in diuers Cities and countries, & vpon statutes which haue ben made in diuers parliaments by our soueraigne Lord the king & his progenitours, and by the Lordes spiritual and temporal and al the commõs of ỹ realme. And I haue also shewed thee in the ix. Cha. of this booke, vnder what maner the said general customes and maximes of the lawe may be proued and affirmed if they were

denied, and diuers other things be contained in
this present Dialogue, which wil appeare in y
table, that is in the latter ende of the booke, as
to the readers wil appeare. And in the ende of
the said dialogue, I haue at thy desire shewed
thee my conceipt cōcerning recoueries of tailed
lands & thou hast vpō the said recoueries shew-
ed me thine opinion. And I beseech our lord let
them shortly in a good cleare way, for surely it
wil be right expedyent for the well ordering of
conscience in many persons, that they be so.

And thus the God of peace & loue
be alway with vs.
Amen.

HEre endeth the first Dialogue in English, wᵗ new additiõs betwixt a Doctour of diuinity, & a Studẽt in the lawes of Englãd. And hereafter followeth the second.

In the beginning of whith Dialogue ꝑ Doctour aunswereth to certayne questions, which the Student made to ꝑ Doctour before ꝑ making of this Dialogue, concerning the lawes of England and conscience, as appeareth in a Dialogue made betwene them in Latin the xxiij. Chapter. And he aunswereth also to diuers other questions that the studẽt maketh to him in this Dialogue, of the law of Englande and cõscience. And in diuers other Chapters of thys ꝓsent Dialogue is touched shortly, howe the lawe of England are to be obserued & kept in this realme, as to tempoꝛal thinges, aswell in lawe as in conscience, before any other lawes. And in some of ꝑ Chapters therof, is also touched that spiritual Judges in diuers cases bee bound to geue their iudgementes accoꝛding to the kinges lawe. And in the latter ende of the booke the doctour moueth diuers cases concerning the lawes of Englãd, wherin he doubteth howe they may stand with conscience, wherunto the student maketh aũswere in such maner as to the reader wil appeare.

IN the latter end of our first Dyalogue in latine, I put diuers cases grounded vpon the lawes of Englande wherein I doubted & yet do, what is to be holde therein in conscience. But for as much as ỹ tyme was then farre past, I shewed thee that I would not desire thee to make answere to them forthwith at ỹ time but at sõe better leisure whereunto thou saiest thou wouldest not onely shew thine opinion in ỹ cases, but also in such other cases as I would put: Wherefore I pray thee now (forasmuch as me thinketh thou hast good leisure) ỹ thou wilt shew me thine opiniõ therein. D. I wil ẅ good wil accõplishe thy desire but I would that when I am in doubt what the law of this realme is in such cases as thou shalt put, ỹ thou wilt shew me what ỹ lawe is therin, for though I haue by occasiõ of our first dyalogue in latin learned many thiges of ỹ lawes of this realme which I knew not before, yet nuertheless there be many mo things that I am yet ignorãt in, & that paraduẽture in these selfe cases that thou hast put & entendest hereafter to put: as I said in the first Dyalogue in latine. Tha. to search cõscience vpon any case of the law it is in vayne, but where the lawe in the same case is perfectly knowen. D. I wil with good wil do as thou saiest, & I entẽd to put diuers of the same questions, ỹ be in the last cha. of the said dyalogue in latin, & sõetime I entẽd to alter some of them, and adde some new questions to them, as I shalbe most in doubte of.

D.

D. I pray the doe as thou saiest & I shal ẅ good will either make aunswere to them forth with as wel as I can, or shal make longer respite to be aduised, or els parauenture agree to thine opinion therein, as I shal see cause. But first I would gladly knowe ꝑ cause why thou hast begon this Dialogue in ꝑ English tõgue, & not in the latin tongue, as the first cases that thou desirest to knowe mine opinion be in, or in frenche as the substance of the lawe is. S. The cause is this. It is right necessary to all men in this realme, both spiritual & temporall for the good ordering of their cõsciẽce, to knowe many thinges of the lawe of Englãd that they be ignorannt in. And though it had bene more gratãt to thẽ ꝑ be learned in ꝑ latin tõgue to haue had in latine rather then in English: yet neuertheles for asmuch as many cã read English that vnderstãd no latin, & some that cannot read English: by hearing it read may learne diuers thinges by it that they shoulde not haue learned if it were in latin: Therfore for ꝑ profite of ꝑ multitude it is put into the Englishe tõgue rather thẽ into the latin or frẽch tõgue. For if it had bene in french, fewe shoulde haue vnderstãd it, but they that be learned in ꝑ lawe, & they haue least nede of it, forasmuch as they knowe the lawe in the same cases wout it, & can better declare what conscience wil thereupon thẽ they that knowe not the lawe nothing at al. To them therefore that be not learned in the lawe of ꝑ realme this treatise is specially made for, thou knowest wel by such studies thou hast

taken to some knowledge of the law of the realme that is to them most expedient. D. It is true ꝑ thou saiest & therefore I pray thee nowe proceede to thy questions.

## ¶ The first question of the Student.

### ¶ The first Chapiter.

IF tenant in taile after possibilitie of issue extinct, do wast, whether doth he therby offend in conscience though hee bee not punishable of wast by the law. D. Is ꝑ law cleer ꝑ he is not punishable for ꝑ wast? S. Ye verely. D. And what is the law of tenants for terme of life, or for terme of yeres if they do wast? S. They be punishabbe of wast by the statutes, & shal yeld treble damages, but at the cōmō law before the statut they were not punishable. D. But whether thinkest thou ꝑ before the stat they might haue done wast ẅ cōscience, because they were not punishable by the law? S. I think not for as I take it, ꝑ doing of the wast of such ꝑticuler tenāts for terme of life, for terme of yeres or of tenants in dower, or by the curtesi: is prohibited by the law of realō, for it semeth of realō that whē such leases be made, or ꝑ such titles in dower or by the curtesie be geuē by the law, that there is onely geuen vnto thē the annuall profits of the lande and not the houses and trees, and the grauel to digge and carry away, wherby ꝑ whole profit of them in the reuersō

should

should be taken away for euer. And therfore at the cõmõ lawe for waste done by tenãt in dower or tenant by the curtesie, there was punishmẽt ordained by the lawe by a prohibition of waste, wherby they should haue yelded damages to ꝑ value of the waste, But against tenaunt for tme of life or for terme of yeres lay no such prohibitiõ for there was no mariue in the law therin against thẽ, as there was against ꝑ other. And I thike ꝑ cause was forasmuch as it was iudged a folly in the lessour ꝑ made such a lease for terme of life or for tme of yeres, ꝑ at that time of ꝑ lease he did not prohibite thẽ they shoulde not do waste, & sith he did not prouide no remedy for himselfe, the law would none prouide.

But yet I thinke not that the entẽt of the law was that they might lawfully & with good cõscience doe waste, but against tenants in dower & by the curtesie the law prouided remedye for they had their title by the law.

And verely me thinketh that this tenaunt in taile as to doing of waste, should be like to a tenant for terme of life, for he shal haue the lande no lenger then for terme of his life, no more thẽ a tenaunt for terme of life shal, and the waste of this tenaunt is as great hurt to him in the reuersion or the remainder, as is the waste of a tenaunt for terme of lyfe, and if hee alyen, the donour shal enter for thẽ forfaiture, as he shal vpon the alienation of a tenãt for terme of life, and if hee make default in a Præcipe quod reddat the donour shalbe receyued as hee shall bee vpon the default of a tenaunt for terme of lyfe,

& therfore me thinketh he shal also be punishable of wast, as tenant for terme of life shal. D. If he alien, the donour shal enter as thou saist because the alienation is to his disheritance, & therefore it is a forfeiture of his estate: & yu by an auncient Maxime of the lawe þ geueth that forfeiture in þ selfe sale, & if he make default in a Pr̃ redr̃, he in the reuersion, as thou saiest shalbe receiued, but that is by þ statute of westm̃ 2. for at the comm̃ lawe there was no such relceit, & as for the statute þ geueth the action of wast against a tenaunt for terme of life and for terme of yeres, it is a statute penall & shal not be taken by equitie, & so there is no remedy geuen against him, neither by common law nor by statute, as there is against tenãt for terme of life, & therefore he is vnpunishable of wast by þ law. D. And though he be vnpunishable of wast by the lawe: yet neuertheles me thinketh he may not by conscience do that, that shalbee hurtfull to the inheritaunce after hys tyme, sith hee hath the lande but for terme of his life, no more then a tenant for terme of life maye, for then hee shoulde doe as hee woulde not be done vnto, for thou agreest thy selfe that though a tenant for terme of life was not punishable of wast before the statute, that yet the lawe iudged not that hee might rightfully and with good conscience doe wast. And therefore at this day if a feoffement be made to the vse of a man for terme of life, though there lie no action against him for wast, yet he offendeth in cõscience if he doe wast, as the tenaunt for terme of

ye like did afore the statute, whē no remedy lay against him by the lawe. Sy. That is trewe, but there is great diuersity betwene this tenāt and a tenant for terme of life: for thys tenaunt hath good authority by ỹ donour to do wast, and so hath not the tenaunt for terme of life, as it is said before. If of the estate of a tenaunt in taile after possibility of issue extinct, is in thys maner, when landes be geuen to a man and to his wife, & to the heires of their two bodies be gotten, & after the one of them dieth wythout heires of their bodies begotten, then he or she that ouerliueth is called tenāt in taile aft̄ possibilitie of issue extinct, because ther cā neuer be no possibility by any heire that may ēherite by vyrtue of the gift. And thus it appereth that the donees at ỹ time of the gift, receiued of ỹ donor estate of inheritāce, which by possibility might nowe cōtinued for euer, wherby they had power to make Leases and to do al thing that is wast, as tenaunt in fe simple might, and that authority was as strong in the lawe, as if the lawe that maketh a lease for terme of life, say by expresse wordes in the leale, ỹ the lessee shal not be punishable of wast. And therefore if the donour in this case had graunted to the donees that they shoulde not be punishable of wast, ỹ graunt had bene void, because it was excluded in the gift before, as it should be vpon a gift in fe simple: & so for almuch as by ỹ first gift & by ỹ liuery of seisen made vpon the same, ỹ donees had authority by the lawe to do wast. Therefore though ỹ one of thole donees be nowe dead

wyth

without issue, so that it is certein that after ye death of the other, the land shall reuerte to the donour: yet the auctority that they had by the donour to do wast, cõtinueth as long as ye gift & the liuery of seasen made vpon the same cõtinueth: & I take this to bee the reason why he shal not haue in aide as tenant for terme of life shal, that is to say, for that he cannot aske help of that maxime, wherby it is ordeined that a tenãt for terme of life shal haue in aid, for he cannot say but that he toke a greater estate by ye liuery of seasen ye was made to him, which yet continueth, hen for terme of life, & so I think him not bound to make any restitutiõ to him in the reuersion in this case, for ye wast. D. If thy mind only to proue ye this tenãt is not bound to make restitution to him in the reuersion for the wast: or that thou thinkest that he may with clere cõscience doe al maner of wast: S. I intend to proue no more but ye he is not bound to restitution to him in the reuersion. D. Then I will right wel agree to thine opiniõ for ye reasons that thou hast made, but if thy mind had ben to haue proued ye he might wt cleare cõscience haue done al maner of wast, I would haue thought the contrary therto, & that the tenãt in fee simple may not do al manner of wast and destruction with conscience, as to pul downe houses and make pasturres of Cities and townes, or to do such other actes which bee agaynst the common wealthe. And therefore some will say that tenaunt in fee simple maye not with conscience destroy his woods and coale pyts

Wherto

whereby a whole cõtrey for their mony haue had fuel, and yet though he do so he is not bound by conscience to make restitution to no persõ in certein. But now I pray thee ere thou proceed to the second case, þ thou wilt somwhat shew me what thou meanest when thou saiest: at the cõmon law it was thus or thus: I vnderstãd not fully what thou meanest by that terme, at the common law. S. I. shal w̃ good wil shewe thee what I meane thereby.

¶ What is mẽt by this terme when it is sayd thus it was at the cõmon lawe.

## ¶ The .ij. Chapiter.

The common lawe is taken three manner of waies. First it is taken as the lawe of thys realme of Englande dilleuered from all other lawes, and vnder this maner taken. It is oftẽ times argued in the lawes of Englande what matters ought of right to be determined by the cõmon law, & what by þ Admyrals court, or by the spirituall court, & also if an obligatiõ beare date out of the realme as in Spaine, Fraunce, or such other. It is said in the law & trouth it is, þ they be not pleadable at þ cõmon law. Secõdly the common law is taken as the kinges courts of his benche, or of the cõmon place, & it is so taken when a plee is remoued out of auncient demeane for that the land is franke fee & pleadable at the cõmon law, that is to say in þ kinges court & not in auncient demesne.

And

And vnder this maner taken, it is oftentimes pleaded also in base courtes, as in courtes Barons, the county and the court of Pypoudets, & such other, this matter or that &c. ought not to be determined in that court but at the common law, ỳ is to say in the kinges courtes &c. Thirdly by the cõmon law is vnderstand such thinges as were law before any statute made in that point ỳ is in question: to ỳ that point was holden for law by the generall or particuler customes and Maximes of the Realme or by the law of reason & the law of god: no other law added to them by statute nor otherwise, as is the case before rehearsed in ỳ firste chapiter, where it is said that at the commun law tenãt by the curtesy and tenãt in dower were punishable of wast, ỳ is to say, ỳ before any statutes of wast made, they were punishable of wast by ỳ ground and maximes of ỳ lawe vsed before the statute made in that point, but tenant for terme of life nor for terme of yeares were not punishable by the sayde grounds and Maximes til by the statute, remedy was geuen against them and therefore it is said that at the cõmon lawe they were not punishable of wast. D. I pray thee now proceede vnto the seconde question.

## ¶ The second question of the Student.

## ¶ The iij. Chapiter.

If a mā be outlawed & neuer had knowledge of the suit, whether may the king take al his goods, and retaine them in conscience as he may by the law. D. What is the reason why they be forfaited by the law in that case? H. The very reason for that it is an olde custome and an old Maxime in the law, that hee that is outlawed shal forfeit his goods to the king, and the cause why that Maxime began was this, whē a mā had dōe a trespas to an other, or an other offece wherfore proces of vtlagary lay, and he that the offence was done to, had taken an action against him according to the lawe, if he had absented himselfe and had no landes, there had bene no remedye against hym: for after the lawe of Englande, no man shalbee condemned without aunswere, or that he appeare and will not aunswere, except it be by reason of any statute. Therefore for the punishment of such offendours as will not appeare to make aunswere and to be iustified in the kinges Court it hath bene vsed without time of minde that an attachement in that case shoulde bee directed against him retournable in the kinges bench or the common place, and if it were retourned thereupon that hee had nought where by he might be attached, that then should goe forthe a Capias to take hys personne, and after an alias Capias, and then a Pluries, & if it were retourned vpon query of the said Capias that he coulde not bee founde and he appeared not, then should an exigent be directed against hym, which should haue so longe a day of retourne, that

that fiue counties might be holden before ꝑ returne therof and in euery of the said fiue counties, the defendant to be solempnely called, & if he appeare not, thē for his cōtumacy & dolobedience of the lawe, the coroners to geue iudgement that he shalbe outlawed, wherby hee shal forfeit his goods to the king and leese diuers other aduantages in the lawe ꝑ needeth not here to be remembred now. And so because he was in this case called according to the law & appered not, it semeth that the kinge hath good title to the goods both in law and conscience.

D. If he had knowledge of the suit in verye dæde, it semeth the king hath good title in cōscience as thou saiſt, But if he had no knowledge therof: it semeth not so, for ꝑ default that is adiudged in him (as appeareth by thine owen reason) in his cōtumacy & disobedience of the law, and if he were ignoraunt of the suite, then can there be assigned to him no disobedience for a disobedience emplieth a knowledge of ꝑ he should haue obeied vnto.

S.

It semeth in this case that he should be cōpelled to take knowledge of the suit at his perill, for sith he hath attempted to offend the law: it seemeth reason that he shalbe compelled to take hede what the law wil do against him for it, & not only that: but that he should rather offer amendes for his trespas then for to tary till he were sued for it. And so it semeth the ignoraūce of the suite is of his owen default, specially sith in the lawe is set such order that euery manne may know if he wil, what suit is taken against him,

him, & may see the recordes therof when he will, & so it semeth ỳ neither ỳ party nor the law be not bounden to geue him no knowledge therin. And ouer this I would somwhat moue further in this matter thus. That though ỳ actiõ were untrue & ỳ defendãt not guilty, ỳ yet the goodes be forfaited to the king for his not apparãce in law, & also in conscience, and that for this cause the king as soueraigne and head of the law, is bounden of iustice to graunt such processes & such processes as bee appointed in the lawe to euery person that will complaine, be his surmise true or false, and thereupon the king (of iustice) oweth as wel to make processe to bring the defendant to answere when he is not guilty, as when he is guilty, & then when there is a maxime in the law, that if a man be outlawed in such manner as before appeareth, that he shall forfait al hys goodes to the kinge, and maketh no exception whether the action be true or untrue, it semeth that the said maxime more regardeth the generall ministration of Iustice, then the particuler right of the party, and therefore ỳ property by the outlary & by the said maxime ordeined for ministratiõ of iustice, is altered & is geuẽ to the king as before appereth & ỳ both in law & in cõscience, aswel as if the actiõ were true. And thẽ ỳ party that is so outlawed is driuẽ to sue for his remedy against him that hath so caused him to be outlawed vpon an untrue action. D.

If he haue not sufficient to make recompence or bye beefore reconerie can bee had, what remedye is had then? S. I. thinke no remedye,

and

& for a further declaration in this case & in such other like cases where the propertye of goodes may be altered without assent of the owner, it is to consider that the propertye of goodes be not geuen to the owners directlye by the lawe of reason nor by the law of God, but by ꝑ law of man, and is suffered by the law of reason and by the law of god so to be. For at ꝑ beginning al goods were in common, but after they were brought by the law of man into a certain propertye so that euery man might know his owne, then when such property is geuen by the lawe of man, ꝑ same lawe may assigne such condycons vpon the property as it listeth, so they be not against the law of God ne the law of reason, and may lawfully take away that it geueth and appoint how long the property shal continue. And one condition that goeth with euery property in this realme, is, if he ꝑ hath the property be outlawed according to such procesle as is ordeined by the lawe, that he shal forfeit the property vnto the king, and diuers other cases there be also, whereby property in goodes shal be altered in the lawe and the right in landes also without assent of the owner, whereof I shal shortly touch some without saying any auctority therein, for the more shortnes. First by sale in open market ꝑ property is altered. Also goods stolen and seised for the king, or suerty be forfait, vnles appel or indictement be sued. Also straies, if they be proclaimed & be not afterclaimed by the owner vnto the yere, be forfait, also a deodand is forfait to whō soeuer ꝑ

per-

party was before (except it belonged to ꝑ king) shalbe disposed for the soule of him that was slaine therwith, and a time with a nonclaime at the common lawe, was a barre, if clayme were not made within a yere, as it is now by statute if the claime be not made within .v. yere. And all these forfaitures were ordeined by the lawe upon certaine considerations which I omitte at this time, but certaine it is ꝑ none of the were made vpon a better consideration then this forfaiture of vtlagary was. For if no clyr expull punishment should haue bene ordeyned for offenders ꝑ would absent themselues & not appeare whē they were sued in the kings courts, many suites in the kinges courtes should haue bene of smale effect. And sith this maxime was ordeined for the execution of Justice, & as much dōe therein by the common lawe, as policie of man could reasonably deuise, to make the party haue knowledge of the suite, and nowe is added thereto by the statute made ꝑ xxij. yeare of king Henry the eight, that a writte of proclamation shalbe sued if the party be dwelling in an other shyre: seemeth that such title as is geue to the king thereby is good in cōscience, especially seeing that the king is bounde to make proces vpon the surmise of the plaintife, and may not examine, but by plee of the party, whether the surmise be true or not. But if the party bee returned fiue times called, ꝑ here in deede he was neuer called (as in the seconde case of the last Chapter of the said dialogue in latin is conteined) then it seemeth the party shal haue good re-

medy by petition to the king, specially if he that made the returne bee not sufficient to make recompence, or die before recouery can be had. D. Now vith I haue herd thine opinio in this cale wherby it appeareth that many things muſt be ſeene, or a full & a plaine declaratio cā be made in this behalfe, & ſeing alſo ỹ the plaine aunſwere to this cale, ſhal geue a great light to diuers other cales, that may come by ſuch forfaiture: I pray thee geue me a farther reſpit, or ỹ I ſhewe thee my full opinion therin, and hereafter I ſhal right gladly doe it. And therefore I pray thee proceede now to ſome other cale.

## ¶ The third queſtion of the ſtudent.

## ¶ The iiij. Chapter.

2 Jac. f. 303

If a ſtraūger do waſte in landes that an other holdeth for terme of life without aſſent of the tenaunt for terme of life: whether may he in the reuerſion recouer trebie damages, and the plaint waſted againſt the tenaunt for terme of life according to the ſtatut, in cōſcience, as he may by the law, if ỹ ſtraūger be not ſufficient to make recompence for the waſt done. D. Ye the law is clere in this cale ỹ he in the reuerſion ſhal recouer againſt the tenaunt for terme of life treble that he aſſented not to the doinge of waſte, & ye verely, and yet if the tenaunt for terme of life had ben bounde in an obligatō in a certaine ſum of money ỹ he ſhould do no waſte: he ſhould not forfait his bond by the waſt of a ſtraunger, but

the diuersity is this. It hath beene vsed as an ancient maxime in ỹ lawe ỹ tenant by ỹ curtesy & tenant in dower should take the laude in this charge, ỹ is to say, that they should do no waste theselues, nor suffer none to be done, & when an action of waste was geue after against a tenaunte for terme of life, then was he taken to bee in the same case as to ỹ point of waste as tenant by the curtesy, & tenant in dower was, that is to say, that he should do no waste, nor suffer none to be don, for there is an other maxime in the lawe of England, ỹ al cases like vnto other cases shalbe iudged after the same lawe as other cases bee, & sith no reason of diuersity can bee assigned betwyn the tenaunt for terme of life after an action of waste was geuen against him, shoulde haue any more fauour in the lawe then the tenant by the curtesy, or tenant in dower should: therefore he is put vnder ỹ same maxime as they bee, ỹ is to say, that he shal do no waste, ne suffer none to be done, & so it semeth that ỹ lawe in this case doth not consider the ability of the person that doth the waste, whether he be able to make recopence for the waste or not. But the assent of the saide tenants, wherby they haue wilfully take vpon them ỹ charge to see that no waste shalbe doe. D. I haue heard that if houses of these tenants be ruinous with sodeine tempest, or with straunge enemies ỹ they shal not be charged with waste. M. Truth it is. D. And I thinke the reason is bicause they can haue no recouery ouer. M. I take not ỹ for the reason, but ỹ it is an auncient reasonable maxime in the lawe that they shoulde

be discharged in those cases, how be it some will say ꝑ in those cases the lawe of reason doth discharge the, & therfore they say ꝑ if a statut were made, ꝑ they should be charged in those cases it shall, that ꝑ statut were against reason, & not to be obserued, but yet neuertheles I take it not so for they might refuse to take such estate if they would, & if they will take the state after the law made: it seemeth reasonable that they take it with the charge & with the condition that is appointed thereto by the lawe, though hurt might follow to them afterwarde thereby, for it is often times seene in ꝑ lawe ꝑ the lawe doth suffer him to haue hurt wout help of ꝑ lawe, that will wilfully runne into it of his owne act not compelled thereto, & adiudgeth it his folly so to run in to it, for which folly he shal also be many times without remedy in cõscience. As if a man take landes for terme of life, and bindeth himselfe by obligation that he shal leaue the land in as good case as he found it, if the houses be after blowne downe with tempest or destroyed with straūge enemies, as in the case ꝑ thou hast put before, he shal be bound to repaire them or els he shall forfeit his obligation in lawe & conscience, because it is his owne act to bind him to it, & yet ꝑ lawe would not haue bound him thereto as thou hast said before. And me thinketh that the cause why the land tenants be discharged in the lawe in an action of waste when the houses be destroyed by lightning tempest, or by straūge enemies, is by a speciall reasonable maxime in ꝑ lawe, whereby they be excepted frō ꝑ other general bond, before rehe-

fed,

ten, that is to say, they shall at their perill see þ no wast shalbe done, & not by the law of reason and sith there is no maxime in this case to helpe this tenant, ne þ he cannot be holpen by the law & reason, it seemeth þ he shalbe charged in this case by his owne act both in law and cõscience, whether the straunger be able to recõpence him or not. D. I doubt in this case whether þ maxime that thou speakest of be reasonable or not, þ is to say, that tenãts of the curtesie & tenantes in dower were bounden by the cõmon lawe, that they should doe no wast themselues, & ouer þ at their peril to see that no wast should be done by any other. For that law seemeth not reasonable that bindeth a man to an impossibility. And it impossible to preuent that no wast shalbee doe by straungers, for it may be sodenly done in the night, that the tenãts can haue no notice of, & by great power that they be not able to reãst, and therefore me thinketh they ought not to be charged in those cases for the wast, wout they may haue good remedy ouer, & thẽ perase þ said maxime were sufferable, & els me thinketh it is a maxime against reason. M. As I haue said before no man shalbe compelled to take the bonde from him, but he that will take the land, & if hee will take the land: it is reason he take þ charge as the law hath appointed with it, & then if any hurt grow to him thereby it is through his owne act & his owne assent, for hee might haue refused the state if hee would.

D. Although a man may refuse to take estate for terme of life, or for time of yeres, & a woman

refuſe to take her dower, yet tenant by the curteſy cannot refuſe to take his eſtate, for immediatly aft the death of his wife, ꝑpoſſeſſion abideth ſtil in him by the act of ꝑ law wout entre, ꝛ then I put the caſe that after the death of his wife, hee would waſtie the poſſeſſion, and after waſte were dõe by a ſtranger, whether thinkeſt thou that he ſhould anſwere to the waſte. S. I thinke he ſhould by the law. D. And how standeth that with reaſõ, ſeeing there is no default in him. S. It was his default, ꝑ at his owne peril that hee would marry an inheretrix whereupon ſuch daunger might follow. D. I put caſe that hee were within age at the marriage, or that the land deſcended to his wife after he maried her. S. There thou moueſt a farther doubt then ꝑ firſt queſtion is, ꝛ though it were as thou ſayeſt, yet thou canſt not ſay but that there is as great default in him, as is in him in the reuerſiõ, ꝛ that there is as great reaſõ why he ſhould be charged with the waſte, as that in the reuerſion ſhould bee diſherited ꝛ haue no maner remedy, ne yet no ꝓfit of the land as the other hath, ꝛ though the laide maxime may be thought very ſtraight to the laide tenants: yet is it for to be fauoured as much as may bee reaſonably, becauſe it helpeth much ꝑ cõmõ wealth, for it hurteth the cõmon wealth greatly when woods ꝛ houſes be deſtroied, ꝛ if they ſhould anſwer for no waſt, but for waſt dõ by tẽpeſte, there might be waſt dõ by ſtrãgers by cõmandement, or aſſent in ſuch colourable maner, that they in ꝑ reuerſion ſhould neuer haue ꝓofe of

their assent. D. I am cõtent thine opinion stãd for this time, and I pray thee nowe procæde to another question.

## ¶ The fourth question of the student.

### ¶ The .v. Chapter.

If he that is the very heire be certified by the ordinary bastard, and after bring an action as heire against another person, whether may any man knowing the truth be of counsail w the tenãt & pledethe said certificat against ỹ demaundãt by cõscience or not. D. Is the law in thys case ỹ al other against whõ the demaũdant hath title shall take aduantage of this certificate as wel as he at whose suit he is certified bastard? S. Ye verely, & ỹ for two causes, wherof ỹ one is this. There is an olde maxime in the lawe, ỹ mischief shalbe rather suffred then an inconuenience, & thẽ in this case if another writ should afterward be sẽt to another Bishop in another shire, to certefy whether he were bastard or not, aduenture that Bishop wouldo certifie that he were mulier, that is to say, lawfully begotte, and then hee should recouer as heire, and so hee should in one selfe court be taken as mulier, and bastard, for auoyding of which cõtrariosity, the law will suffer no moe writs to go forth in that case, and suffreth also al men to take aduantage of certificate, rather then to suffer such a contradiction in ỹ court, which in the law is called an inconuenience, & the other cause is because this

certificate of ỹ Bishop, is the highest triall ỹ is in ỹ law in this behalfe, but this is not vnderstād but where bastardy is layde in one that is party to the writ, for if bastardy be layde in one that is a strāger, to the writ, as if voucher pray in aide or such other, then that bastardy shalbe tried by xij. men, by which triall he in whom the bastardy is laid, shal not be cōcluded, because he is not ỹ iuy to the triall, & may haue no attaint, but he that is party to ỹ issue may haue attaint, & therfore he shalbe concluded & none other but he, & for almuch as the said maxime was ordeined to eschewe an inconuenience (as before appeareth) it semeth that euery man learned, may with conscience plede the said certificate for auoiding thereof, & geue counsaile therin to ỹ ptie according vnto the law, for eis the said inconuenience must needes follow. Yet yet neuertheles I doe not meane thereby that the partie may after whē he hath barred the demandāt by the said certificate, retaine the land in conscience by reason of the said certificate, for though ther be no law to compel him to restore it, yet I thinke well that in cōscience he is bound to restore it, if he know that ỹ demandāt is ỹ very true heire thereof. I haue put diuers cases like in the xxvj. chap. of our first dialogue in latin, but my entent is that a mā learned in the law in this case & other like, may in conscience geue his counsaill according to ỹ law, in auoiding of such thinges as if they fell in ỹ ptie, he should for a reasonable cause be excused. As where he ỹ doth not know whether ỹ be bastard or not, may geue his counsaill

also

also plede the said certificate: yet I thinke that he that doth know himselfe to be the very true heire may not plede it, & that is for two causes whereof the one is this.

Euery man is bound by the law of reason to doe as hee would be done to, but I thinke that if hee that pledeth that certificate were in like case, he would thinke that no mā knowing the said certificate to be vntrue, might with cōscience pleade it against him, wherefore no more may he pleade it against none other.

The other cause is this, although the certificate be pleded, yet is the tenāt holden in cōscience to make restitution thereof, as thou haste said thy selfe, and thē in case that he would not make restitution, then he that pleadeth the plee, should run thereby in like offence, for hee hath holpen to set the other man in such a liberty that hee may chose whether her will restore the lande or not, and so hee shoulde put himselfe to iuparby of another mans conscience. And it is written Ecclesiast. iii. Qui amat periculum peribit in illo. That is, he that wilfully will put himselfe in teopardy to offend, shall perish therein, & therefore it is the surest way to eschew perils, from him that knoweth that he is heire, not to plede it, and as for the inconuenience that thou hast made followeth, but the certificate bee pleaded: as to that it may be answered that it may be pleaded by some other þ knoweth not þ he is very heire, & if the case be so far put that there is none other learned there but hee, then he thinketh that he shall rather suffer the same incon-

inconuenience, then to hurt his owne cõscience, for alway charity beginneth at him selfe, & in euery mã ought to suffer al other offeces rather then he himselfe would offend. And nowe that thou knowest mine opinion in this case, I pray thee proceede to another question.

## ¶ The fifth question of the student.

## ¶ The vj. Chapter.

WHether may a man with conscience bee of counsaile with the plaintife in an action at the cõmon law, knowing ỹ the defendant hath sufficient matter in conscience whereby he may bee discharged by a Subpena in the Chauncery which he cannot pleade at the common lawe or not? D. I may thee put a case thereof in certaine, for els the question very general.

S. I will put the same case that thou puttest in our first dialogue in latin, the x. chapter, that is to say, if a man bound in an obligation payd money, & taketh none acquitance, so that by the cõmon law he shalbe cõpelled to pay the money againe for such cõsideration, as appeareth in the xv. chap. of the said dialogue, where it is shewed euidently how the law in ỹ case is made vpon a good reasonable ground, much necessary for al the people, howbeit, that a man may somtime through his owne default take hurt thereby wherein I pray thee shewe mee thine opinion.

D. this case seemeth to bee like to the case that thou hast put next before this, & that bee that knoweth the payment to be made doth not as he would be done to, if he geue counsel that an ac-

on should be taken to haue it paied againe. S. If he be ſworne to geue counſel accoꝛding to ꝓ law, as ſeꝛgeãts at the law be, it ſeemeth he is bound to geue counſaile accoꝛding to the law, foꝛ els he ſhould not perfoꝛme his othe. D. In thoſe woꝛds (accoꝛding to the law) is vnderſtand the law of God, & the law of reaſõ, alſwel as the law & cuſtomes of ꝓ realme, foꝛ as thou haſt ſaid thy ſelfe in our firſt dialogue in latin, that the law of god & the law of reaſon, be two ſpecial grounds of the laws of Engläd, wher vpõ as me thinketh he may giue no counſel (ſaiing his othe) neither againſt ꝓ law of god noꝛ the law of reaſon, & certein it is that this artikle, ꝓ is to ſay, ꝓ a man ſhall do as he woulde be done to, is groũded vpõ both ꝓ ſaid laws. And firſt ꝓ it is groũded vpõ the lawe of reaſõ, it is euident of it ſelfe. And in the vj. chap. of Saint Luke it is ſaid, Et prout vultis vt faciant vobis homines, & vos facite illis ſimiliter. that is to ſay, al that other men ſhould do to you: do you to them, & ſo it is grounded vpon the law of god, wherefore if he ſhould geue counſail againſt ꝓ defendant in ꝓ caſe he ſhould do againſt both ꝓ ſayd laws. S. If the defendant had no other remedy but the common law. I would agree wel it were as thou ſaiſt, but in this caſe he may haue good remedy by a Subpena & this is the waye that ſhal induce him directly to his Subpena, that is to ſay, when it appeareth that ꝓ plaintife ſhal recouer by the lawe. D. Although the defendant may be diſcharged by Subpena yet the bringing in of his plees there, ſhall be to

the

the charge of the defendant, and also the proues may dye or they come in. Also there is a ground in the law of reason, quod nihil possimus contra veritatem (that is) we may doe nothing against the truth, & sith he knoweth it is truth that ꝑ mony is payd he may do nothing against ꝑ truth, and if he should be of counsaile with the plaintif, he must suppose & auerre that it is the very due debt of the plaintif, & that the defendant withholdeth it frō him vnlawfully, which he knoweth him selfe to bee vntrue, wherefore hee may not with conscience in this case be of counsaile with the plaintife, knowing that ꝑ plaintife is payde already, wherefore if thou be cōtented to this answere: I pray thee proceede to some other question. S. I will with good will.

## ¶ The vij. question of the Student.

## ¶ The vij. Chapter.

A Man maketh a feoffement to the vse of him & of his heires, & after the feoffour putteth in his beastes to manure the ground, & the feoffee taketh them as damages feasant, & putteth them in pounde, & the feoffour bringeth an action of trespas against him for entring into his ground &c. whether may any wil knowing the said matter be of counsaile with the feoffee to auoide the action. That may he by the cōmon law auoide the action, for that the feoffour ought in cōscience to paie the penalty. S. Verily for as to the

com-

comm̃ lawe the whole interest is in the lessee, & if the feoffe will breake his cõscience, & take the profits: the feffour hath no remedy by the common lawe, but is driuẽ in that case to sue for his remedy by subpena for the profittes, and to cause him to refeoffe him againe, & that was sometime the most common case where the subpena was sued, that is to say, before ỹ statute of 11. H. 7. but sith the statute, the feffor may lawfully make a feffement. But nevertheielle for the profittes receiued, ỹ feoffor hath yet no remedy but by subpena as he had before the saide estatute. And so the suppose of this action of trespas is vntrue in euery point, as to the common lawe.

D. Though the action be vntrue as to the lawe yethee that sueth it ought in conscience to haue that he demaundeth by the action, that is to say, damages for the profits, & as it seemeth no man may with conscience geue counsaile, against that he knoweth conscience woulde haue done. S. Though conscience would hee shoulde haue the profits, yet cõscience will not that for the attaining thereof the feoffor should make an vntrue surmise. Therefore against ỹ vntrue surmise euery man may with cõscience geue his counsaile for in that doing he resisteth not the plaintife to haue the profits, but hee withstandeth him in that he should not maintein an vntrue action for the profits. And it sufficeth not in ỹ lawe, for yet in conscience as me seemeth, that a man haue right to that he sueth for, but that attaining thereby a iust meanes, & that he haue both good right, & also a good and a true conueiance to come to his right

for

for if a man haue right to lands as heire to his father, & he wil bringe an action as heire to his mother ꝑ neuer had ryght, euery man may giue counsaile against ꝑ action though he knowe he haue right by an other meanes, & so as me thinketh he may do in dilatories, wherby the party may take hurt if it were not pleaded, though he knew the plaintife haue right, as if the party or ꝑ towne bee misnamed or if the degrees in writs of entre be mistake, but if ꝑ party should take no hurt by admittinge of a dilatory then he that knoweth ꝑ the pl' hath right may not plede ꝑ dilatory with conscience as in a formedon to plede in abatement of ꝑ writ because he hath not made himselfe heire to him that was last seised, or in a writ of right for that the demaundant hath omitted one that tended right to such other, ne he may not assent to the casting of an essoigne nor protection for him if he know that the demaundant hath right, ne he may not vouch for him, except it be that he knoweth ꝑ the tenant hath a true cause of a voucher, & a lien, & ꝑ he doth it to bring him therto, & in like wise he may not pray in aide for him vnles he know ꝑ praier haue good cause of voucher & iurisdiction, or that he knew that ꝑ prayer hath somewhat to plede ꝑ the tenãt may not plede, as bilefne in the demaundaunt, or such other. D.

Though the plaintife hath wrought an action ꝑ is vntrue & not maintenable in the law, yet the defendãt doth wrong to the plaintif in the withholding of the moũtes as wel before the action brought as hanging the action, and that wrong

as

as it seemeth the counsailour doth maintaine & also sheweth himselfe to fauor the party in that wrong when he geueth cõsaile against the action. S. If the plaintife doe take that for a fauour and a maintenaunce of his wronge, he goeth farther then the cause is geuen, so that the cõsailor doe no more but geue counsaile against the action, for though hee geue him counsaile to withstand the action for the vntruth of it, and that he should not cõfesse it and to make peace by a fine to the kinge without cause, yet it may stand with reason that hee may geue counsaile to the party to yeelde the profits, & therefore I thinke he may in this case be of counsaile with him at the cõmon law, & be against him in the chauncery, & in either court geue his counsaile without any contrariosity, or hurt of conscience, and vpon this ground it is þ a man may with good cõscience be of cõsail with him that hath land by discent, or by a discõtinuãce without title, if he that hath the right bring not his action according to the lawe, for the recouering of his right in that behalfe.

## ¶ The seuenth question of the Student.

### ¶ The viij. Chapter.

If a man take distres for debt vpõ an obligation, or vpõ a cõtract, or such other thing that he hath right vnto to haue, but þ he ought not by þ law to distraine for it, & neuertheles he keepeth

the

The same distresse in pound til he be paid of his duety, what restitution is he bound to make in this case, whether shal he repay the money he cause he is cõe to it by an vnlawfull meanes, or only to restore the party for ỹ wrongful taking of ỹ distres, or for neither, I pray you shew me. D. what is the lawe in this case? M. That he that is distrained may bring a speciall action of trespas against him ỹ distrained, for ỹ hee took his beasts wrõgfully, & kept them till hee made a fine & therefore he shal recouer ỹ fine in damages, as he shal doe for ỹ residue of trespas, for ỹ taking of the money by such cõpulsion, is taken in ỹ lawe, but as fine wrongfully take, though it be his duety to haue it. D. Yet though he may so recouer, me thinketh ỹ as to ỹ repayment of the money he is not bound thereto in conscience, so ỹ he take no more thẽ of right he ought to haue, for though hee come to it by an vnlawfull meane, yet when ỹ money is paide him, it is his of right & hee is not bound to repay it vnlesse it be recouered as ỹ saidst, and then when he hath repaide it, he is as mee thinketh restored to his first actiõ, but to ỹ redeliuery of ỹ beastes to such damages & such hurt as he hath by the distresse. I suppose he is bound to make recopence of this in conscience without compulsion or sute in the lawe, for though hee might lawfully haue sued for his duety in such maner as ỹ lawe hath ordered, yet I agree wel ỹ he may not take vpon him to be his owne iudge, & to doe to his duty against the order of the lawe, and therefore if any hurt doe to the party by the disorder he is bounde to

restore

restore it. But I would thinke it were ꝑ more doubt if a man toke such a distresse for a trespas done to him, & depeth ꝑ distresse til amēds be made for the trespas, for in case that the dāmages bee not in certein but bee arbitrable either by the assent of the parties or by ꝑsons, & it semeth that there is no assent of the party in this case specially no free assēt, for that he doth it by coppulsion and to haue his distres again: and so his assent is not much to be pondered in that case, for al his assenting of him that toke ꝑ distresse, and so he hath made hymselfe his owne iudge and that is prohibited in al lawes, but in that case where the distresse is take for debt, he is not his owne iudge, for the debt was iudged in certeyne before by the first contract & therefore some thinke great diuersitie betwene the cases. S. By that reason it semeth that if he ꝑ distraineth in the first case for the debt take any thing for his dāmages, that he is bound in conscience to restore it again, for dammages be arbitrable and not certaine no more then trespas is, & me semeth that both in the cas of trespas, & debt he is bound in conscience to restore that he taketh, for though he aught in right to haue like summe as he receiueth, yet he ought not to haue the mony that he receiueth, for he came to the money by an vniust meanes, wherefore it semith he ought to restore it againe. D. And if he shoulde bee compelled to restore it againe: should he not yet (for that he receiued it once) be barred of his first action notwithstandinge the payement? S.

I wil not at this time clearely assoile thee that questiō, but this I wil say that if any hurt cōe to him thereby, it is through his owen default, for that he woulde doe against the law, but nenertheles a little I wil say to thy questyō, that as me semeth whē he hath repaied the money ꝑ he is restored to his first action. As if a manne condempned in an action of trespas pay the money, and after the defendant reuerse the iudgement by a writ of errour & haue his money repaied, then the plaintife is restored to his first action. And therfore if he that in this case took the mony: restore that he toke by the wrongful distres: or that he ordered the matter so liberally that the other murmure not, ne cōplaine not at it, me semeth he did very wel to bee sure in conscience: and therfore I would aduise euery man to be wel ware how he distraineth in such case against the law. D. Thy counsaile is good & I note much in this case that the party may haue an action of trespas against him ꝑ distrained so that he is taken in ꝑ law but as a wrōg doer, & therfore to pay the money againe is the sure way as thou hast said before. And I pray thee now shewe me for what a man may lawfully distraine as thou thinkest.

¶ For what thing a man may lawfully distraine.

¶ The ix. Chapiter.

A man

A Manne may lawfullye dystrayne for a rent seruice and for all manner of seruices, as homage, fealty, escuage, suit of courte, reliefes and such other. Also for a rent reserued vpon a gift in taile, a leale for terme of life, for yeres, or at will, if he reserue the reuersio: the feffer shal distraine of common right though there be no distresse spoken of. But in case a man make a feffemẽt & that in fee by endenture, reseruing a rent, he shal not distraine for that rent vnlesse a distresse bee expressely reserued, & if the feoffement be made without a dede reseruinge a rent, that reseruation is void in the lawe, and he shal haue the rent onely in conscience & shal not distraine for it, and like lawe is where a gift in taile or a leale for terme of life is made the remainder ouer in fee reseruinge a rent, that reseruation is voide in the lawe. Also if a man seised of lande for terme of life graunteth away his whole estate reseruinge a rent, that reseruation is void in the lawe without it be by indenture, and if it be by indenture: yet he shal not distrain for the rent, but a distresse be reserued. Also for amercyament in a leete, the Lord shall distrayne. But for amercyament in a courte baron he shal not distraine.

Also if a man make a leale at Michelmas for a yere, reseruing a rent payable at the feaste of the Annunciation of our Lady and Saint Michel the Archangel, in that case he shal distraine for the rent due at our Lady day but not for the rent due at Mychaelmas because the terme is expired.

But if a man make a leale at ꝑ feast of Christmas for to endure to the fealte of Christmas next followinge, that is to say for a yere, reserving a rēt at the aforesaid feast of the Annunciation of our Lady and saint Michael the Archangel there he shal distraine for both the rēts as long as the terme continued, that is to say til that aforesaid feast of Christmas.

And if a man haue lande for terme of life of John at Noke and maketh a leale for terme of peres reseruing a rent, that rent is behind and John at Noke dieth, there he shal not distrain because his reuersion is determined.

Also if he to whose vse feffees bene seised maketh a leale for terme of peres, or for terme of lyfe, or a gift in taile reseruing a rent, there the reseruation is good and the lessour shall distraine.

And if a towneship be amerced & that neighbours by assent assesse a certaine summe vppon euery inhabitant, & agree that if it bee not paid by such a day, ꝑ certein persons therto assigned shal distraine. In this case the distres is lawful. If lord & tenant be, & if the tenant do hold of the lord by fealty and rent, & the Lord doth graunt away the fealty reseruing the rent, and the tenant attourneth, in this case he that was lord may not distraine for the rent, for it is become a rent secke. But if a man make a gyfte in taile to another, reseruing fealty and certain rent, and after that hee graunteth away the fealty reseruing the rent & the reuersion to him selfe, in this case hee shall distraine for the rent,

for

for the graunt of the fealty is voide, for the fealty cannot be seuered frō the reuersion. Also for heriote seruice, the Lord shal distraine & for heriote custome he shall cease and not distraine. Also if a rent be assigned to make a partition or assignement of dower egal, he or shee to whom that rēt is assigned may distraine, & in all these cases aboue said, where a man may distraine, he may not distrain in the night, but for damages feisant, that is to say, where beastes doe hurt in his ground he may distraine in the night. Also for waste, for reparatiōs, for accopts, for debts vpon contracts, or such other no mā may lawfully distraine. 1 Li: 260:

¶ The viij. question of the Student.

¶ The x. Chapiter.

I F a man doe a trespas and after make his executors & die before any amēds made, whether be his executours bounde in conscience to make amends for the trespas if they haue sufficient goods therto, though there be no remedy against them by the law to compell them to it. D. It is no doubt but they are bound thereto in conscience before any other deede in charitye they may doe for him of their own deuotiō. S. Me mought I wit if the testatour made legacies by his wil, whether the executors be bound to the first, that is to say, to make amends for the trespas, or to pay the legacies, in case they haue no goods to doe bothe? D. To pay legacyes,

for if they should first make recompence for the trespas and then haue not sufficient to pay the legacies: they shoulde be taken in the lawe as wasters of their testators goods, for they were not compellable by no lawe to make amendes for the trespas, because euery trespas dieth in the person, but the legacies they should be compelled by the law spiritual to fulfil and so they should be compelled to pay the legacies of their owne goods, & they shal not be compelled thereto by no lawe ne conscience, but if the case were that he leaue sufficient goods to doe both, then me thinketh they be bound to do bothe, & that they be bounden to make amends for the trespas before they may doe any other charytable deede for the testatour of their owne minde as I haue laid before, except the funeral expences that be necessary which must be allowed before al other thinge. S. And what the prouing of the testament?

D. The ordinary may nothing take by conscyence therfore if there be not sufficient goods beside for the funerals to pay the debts & to make restitution. And in likewise the executours is bound to pay debts vppon a simple contract before any other dede of charity that they may do for their testatour of their owen deuotiō though they shal not be compelled thereto by the law.

S. And whether thinkest thou that they be bound to do first, that is to say, to make amendes for the trespas, or to pay the debts vppon a simple cōtract. D. To pay the debts, for that is certain and the trespas is arbitrable. S.

Then

Then for ỳ plainer declaratyon of this matter and other like, I pray thee shew me thy minde by what lawe it is that if a mā may make executours and that the executours if they take vpō them be bound to perfourme ỳ will & dispose the goodes that remayne for the testatour. D. I thinke ỳ it is best by the lawe of reasō. S. And me thinketh that it should be rather by the custome of the realme. D. In al countries and in al landes they make executours. S. That semeth to be rather by a generall custome, after ỳ the lawe and custome of property was brought in, then by the lawe of reason, for as long as all thinges were in common, there were no executors ne willes, ne they needed not then, & whē propertie was after brought in, me thinketh ỳ yet making of executours & disposing of goods by will after a mans death followeth not necessarily thereupō, for it might haue ben made for a lawe that a man should haue had the propertie of his goodes onely duringe his lyfe, and that then his debtes paied, al his goodes to haue ben left to his wyfe and children or next of his kin wythout any legacies makinge therof, and so might it now be ordeined by statute, and the statute good and not against reason, wherefore it appeareth that executors haue no authoritie by the lawe of reason, but by the lawe of man. And by the old lawe and custome of this realme a man may make executours and dyspose hys good by his will, and then his executours shall haue the execution therof, & his heires shal haue nothing, but if any particuler custome helpe &

the executors shal also haue the whole possessiō & disposition of al his goods and chatteis aswel real as personel, though no worde be expressely spoken in the wil, that they shal haue them, & they shal haue also actions to recouer al debtes due to the testator, though al debts & legacyes of the testator be paid before, & shal haue ỹ disposition of them to the vse of ỹ testator & not to their owen vse, & so me thinketh that ỹ authority to make executors & that they shal dispose the goods for the testatour: is by the customs of the Realme. But then I thinke as thou saist, ỹ by the lawe of God they shalbe bound to doe the first, ỹ is to the most profit of the soule of their testatour where the disposition thereof is left to their discretion, & that I agree wel is to pay debts vpon contractes & to make amendes for wronge done to the testator, though they be compelled thereto by the law & custome of the realme, if there be none other debt nor legacy ỹ they be bounde to pay by the lawe: but if two seuerall debtes bee payable by the lawe, then which debt they shall do first in conscience; I am somewhat in doubt. W. Let vs first know what the common law is therein. S. The cōmon law is that if the testatour owe x.li. to two men seuerally by obligation or by such other manner that an action lyeth against hys executours thereof by the lawe, and he leueth goods to pay the one and not both, that in that case hee that can first obtayne hys iudgement against the executours, shall haue execution of the whole, and the other shal haue nothing but

to

to which of them he shal in conscyence owe his fauour: the common lawe reacheth not. D. Therein must hee considered the cause why the debts began, and then hee must after conscience beare his lawfull fauour to him that hath ꝑ clerest cause of debt, & if both haue like cause, then in cõscience hee must beare his fauour where is most nede and greatest charity.

S. May the executours in that case delay that action that is first taken, if it stand not with so good conscience to bee payde, as mother debte whereof no action is brought, and procure that an action may bee brought thereof, and then to confesse that action, that he may so haue execution, and then the executors to be discharged against the other? D. Why may he not in that case pay thother without action, and so be discharged in the lawe against the first?

S. No verely, for after an action is taken, ꝑ executour may not minister the goods so, but ꝑ he leue so much as shal pay the debt whereof the action is taken, & if hee do not, he shall pay it of his owne goods, except an other recouer & haue iudgement against him hanging that action, & that without couin.

D. Then to aũswere to thy question, I thinke that by delaies that be lawful, as by Essoigne, imparlaunce, or by Dilatory plee in abatement of the writ that is true, he may delay it, but he may plede no untrue plee to preferre the other to his duety. But I praye thee what is the lawe of legacies, restitution, & debts, upon cõtracts, that percase ought rather after charity

Wirul 208
Vaugh. 95.

to

to be paid then a debt vpon an obligatiō, what may the fauour of the executour do in those cases. S. nothing, for if they either perfourme legacies, make restitutions, or pay debts vpon contracts, and keepe not sufficient to pay debts which they are compellable by the law to pay, that shalbe taken as a Deuastauerunt bona testatoris, that is to say, that they haue wasted ỹ goods of their testatour, and therefore they shalbe compelled to pay the debts of their owne goods, so it is if they pay a debt vppon an obligation whereof the day is yet to come though it be the clerer debt, and that be the more charity to haue it payd. D. Yet in that case if he to whom the debt is already owing, forbeare till after the day of the other obligation is past, then he may pay him without daunger. S. That is true if there bee no action taken vppon it, and though there bee, yet if that action may bee delayed by lawfull meanes, as thou hast spoken of before, till after the day, and that an action is taken vpon it, then may the executours confesse the action, and then after iudgement hee may pay the debt without daunger of the lawe. D. Is not that confessing of the action so done of purpose a couin in the law? S. No verely, for couin is where the action is vntrue, and not where the executours beare a lawfull fauour.

D. The ordinary vppon the accompt in all the case before rehearsed, will regarde much what is best for the testator. S. But hee may not driue them to accompt against the order of the common lawe.

The

¶ The ix. question of the Student.

¶ The xj. Chapiter.

A Man is indebted to an other vpon a simple contract in xx. li. and he maketh his will and bequetheth xx. li. to Hēry Hart & dieth, & leueth goods to his executors only to bury him with, & to perfourme the said legacy, & after the sayd executours deliuer the goods of their testatour in perfourmance of the said bequest, whether is he to whō ỹ bequest is made, bound in conscyence to pay the said debt vppon the simple contract to the said Henry Hart or not: D. Is he not bound therto by ỹ law: S. No verely. D. And what thinkest thou he is in conscience. S. I thinke that he is not bound therto in cōscience, for he is neither ordinarye, administratour, nor executour. And I haue not heard that any man is bound to pay debts of any mā that is decealled, but he be one of those thre, for the goods that ỹ testator left to the executors were neuer charged with the debt, but the person of the testatour while he liued was only charged with the debt, and not his goods, and his executors that represent his estate after his death haninge goodes thereto of the testatours, bee charged also with the debts and not the goods. And therefore if an executour gene away or sel al the goods of the testatour, or otherwyse wast them, he that hath the goods is not charged with the debtes in lawe nor conscience, but the executors shalbe charged of their owne

goods

goods & in likewise if Jo. at Noke owe to A. B. xx. li. And A. B. oweth to C. D. xx. li. & after A. B. dieth intestate hauinge none other goods but the said xx. li. which the said John at Noke oweth him, yet the said C. D. shal haue no remedy against the said John at Noke, for he standeth not charged to him in lawe nor cõscience. But the ordinary in that case must cõmit administration of the goods of the sayd A. B. And the said administratour must leuy the money of the said John at Noke & pay it to ỳ said C. D. And the said John at Noke shall not pay it him selfe because he is not charged therewith to him, and no more me thinketh in this case that he to whom ỳ bequest is made, is neither charged to him ỳ the money was owing to, in the lawe or conscience. D. Then shew me thy minde by what lawe it is grounded as thou thinkest that executors be bounde to pay debtes before legacies, whether is it by the lawe of God, or by the lawe of reason, or by the lawe of man as thou thinkest? S. I thinke that it is both by ỳ lawe of reason & by the lawe of god, for reasõ wil that they shal do first that is best for the testatour, and that is to pay debts that his testatour is bounde to pay before legacyes that he is not bound to. And also by the lawe of God they are bound to pay the debtes first, for firſt they are bounden by the lawe of God to loue their neighbour, they are bound to doe for him ỳ shalbe best for him when they haue taken the charge thereto, as executours do when they agree to take the charge of that will

of

of their testatour vpon them, and it is better for the testatour that his debts be paid (wherfore his soule shal suffer paine) thē that his legacies be perfourmed, wherfore he shal suffer no paine for the perfourming of them.

And that is to be vnderstād where the legacy is made of his owne free will and not where it is made as a satisfactiō of any duty. And after the saying of S. Gregory ỹ very true ꝓpose of loue is the deede. But this mā is not in ỹ case, for he toke neuer the charge vppon him to pay the debts of the testatour. And therefore he is not bound to them in law nor conscience as me seemeth. But rather the executors shoulde haue ben ware er they had paid the legacies, seeinge there were debtes to pay. W. The executours might noe otherwise haue don in this case but to pay the legacies, for thē they shouldhaue ben compelled by the law to haue paid, and so they could not haue ben to haue paied the debt vpon ỹ cōtract. And therfore they did wel in perfourming of that legacy, but he to whom the legacy was made ought not to haue taken thē but ought in conscience to haue suffered thē to haue gone to the payement of the debt, & sith he did not so but toke thē where he had no right to them, it seemeth that when he toke thē, he toke with them the charge in conscience to pay the debt, for sith the executors were compellable by the law to perfourme that bequest & not to pay the det, therefore when they perfourme that bequest, they were dyscharged thereby against him that the debt was owinge to, in the law

and

and conſcience & then ꝑ charge reſted vpon him that tooke ꝑ goods where he ought not in conſcience to haue taken them, but if it had beene a debt vpō an obligatiō or ſuch other debt wherevppon remedy hath bene had againſt the executors by ꝑ lawe. ❡ there ſuppoſe though ꝑ the executors had perfourmed the legacy, that yet he to whom ꝑ legacy was made & perfourmed, had not ben charged in conſcience to the paymēt of the debt, for ꝑ executors ſtood ſtil charged therto of their owne goods, & he to who the bequeſt was made was only bound in conſcience to repay that he receiued, to ꝑ executors, becauſe he had no right to haue receiued it, for againſt the executours he had no right thereto. ❡. Then it ſemeth in this caſe that in likewiſe he to whom that bequeſt was made, ſhould repay that he receiued to the executours, and then they to pay it rather then he. ❡. The executors haue no farther medling with it as this caſes is, for whi they perfourmed the bequeſt they were diſcharged againſt both the other in lawe and conſcience, & alſo he to whom the bequeſt was made, ſtode not in this caſe charged to the executors, for againſt them hee had good title by the lawe, and ſo this charge ſtandeth onely againſt him that the debt is owinge to: and the laine lawe that is in this caſe vpon a debt vpon a contract is if the teſtatour had done a treſpas wherupon he ought to haue made reſtitution, that is to ſay, that hee to whome the bequeſt is made, is bounde to make the amendes for the treſpaſſe, for it ſhoulde bee noe diſcharge to him

to

to pay it againe to the executors without they paid it ouer, & it were vncertaine to him whether they should pay it or not.

And therefore to be out of peril: it is necessary that he pay it him selfe, and then he is surely discharged against al men.

## ¶ The x. question of the Studẽt.

## ¶ The xij. Chapiter.

A Man seised of certein lãd in his demeane as of fee, hath issue two sõnes and dieth seised, after whose death a stranger abateth, & taketh the profit, and after the eldest sonne dieth without issue & his brother bringeth an assise of Mortdauncester as sonne and heire to his father, not making mention of his brother and recouereth ỹ lãd with damages frõ the death of his father as he may wel by ỹ law, whether in this case is the yonger brother bound in conscięce to pay to the executors of the eldest brother the paine of the profits of the said land that belongeth to ỹ eldest brother in his life or not? D. what is thine opinion therin? S. That like as the said profittes belonge of right to the eldest brother in hys life, and that hee had full authority to haue released aswel the ryght of the said lande as of the sayd profites, which release shoulde haue bene a clere barre to the yonger brother for euer: That the right of the sayd damnages

which

which be in the lawe but a chattell, belonge to his executours and not to the heire, for no maner of chattel neither real nor personal shal not after the lawe of the realme dyscende vnto the heire.

D. Thou saidest in the case next before, that it is not of the law of reasō that a man shal make executors, & dispose his goods by his will, & y the executorz shal haue the goods to dispose them, by the law of man, & if it be left to the determination of the law of man.

That in such cases as þ law geueth such chatels vnto the executours, they shall haue good right vnto them, and in such cases as the law taketh such chatels from them, they ben rightfully takē frō thē. And therefore it is thought by many þ if a man sue a writ of right of ward of a ward that he hath by his owne fee & dieth hanging the writ, & his heire sue a resūmōns cording to the statute of West. seconde, & recouereth, that in that case the heire shal enioy the wardship against the executors, & yet it is but a chattell, & they take the reason to be because of the said statute, and so myght it be ordeined by statute, that al wardes should go to þ heires and not to the executours. Right so in this case sith the lawe is such that þ yonger brother shal in this case haue an assise of Mordaunces as heire to his father not makinge any mētion of his elder brother, and recouer damages aswel in the time of his brother as in his owne time, it appeareth that the lawe geueth the right of theis damnages to the heire & therefore

fore no recompence ought to be made to the executors, as me semeth, & it is not like to a writ of debt, where as I haue learned in Latin (by the first dialogue) the demaundant shall recouer damages only fro the death of his father, if he ouerliue y Iuel, & the cause is, for that y demaundant though his Iuel ouerliued his father, nathelesse he may make his conueiance by his father, & muste make himselfe lone & heire to his father, and collin & heire to his Iuel, & therefore in that case if the father ouerliued the Iuel, the aduantours were holden in conscience to restore to y executours of the father the profits run in his time, for no lawe taketh them fro him, but otherwise in other case as me semeth. Sō. If the yōger brother in this case had entred into the lande to our vse, and alyde of the eldest brother as heer might be made, to whom after y aduantours were bounde to make restitution for thole profits as afore is said. Ma. To the executors of the eldest brother, for in that case there is no lawe that taketh them from them, and therefore y generall ground, which is, that al chattels that goe to the executors, holdeth in that case, but in this case that ground is broken & holdeth not, for the reason y haue made before, for continually there is no generall ground in the lawe so sure, but that it faileth in some particuler case.

## The xj. question of the Student.

## The xij. Chapter.

A man seised of lande in fee taketh a wife, and after alieneth ꝑ lande, and dieth, after whose death his wife asketh her dower, ꝑ the tenant refuseth to assigne it vnto her, but after she asketh her dower again, and he assigneth it vnto her, whether is ꝑtenue in this case bound in conscience to geue the woman damages for ꝑ profits of the land after her third parte ꝛed the death of her husband, or ꝛed the first request of her dower, or neither the one nor ꝯther? D. What is the law in this case? S. by the law the woman shall recouer no damages, for at the comon lawe, the demaundant in a writ of dower shoulde neuer haue recouered damage. But by the statute of Merton it is ordained, that where ꝑ husbande dieth seised, ꝑ the woman shal recouer damages (which is vnderstand the ꝓfits of the land) ꝛed the death of her husband, and such damages is she hable by the forbearing of it, but in this case the husband died not seised, wherefore she shall recouer no damages by the law. D. yet the reason is, that immediately after ꝑ death of her husband the wife bound of right to haue her dower, in like wise if though her husband dyed not seised.

S. That is true.

D. Indede she ought to haue her dower ꝛed the death of her husband, it seemeth ꝑ she ought in conscience to haue also the ꝓfits ꝛed ye death of her husband, though she haue no remedy to come to them by ꝑ lawe, for me thinketh that this case is like to a case that thou puttest in our first Dialogue in Latin, the xvij. Chapter, That if a tenant for terme of life be disseised and

ble, and the disseisor dieth, & his heire entreth & ouster the possessiõ, & after hauing reuersiõ recouereth the landes against the heire, as he ought to do by y lawe, that in that case he shal recouer no damages by the lawe. And yet thou doubtest agey thou in what case the heire is bound in reuersiõ to pay the damages to the demaundant, & to whom saith he in this case that hath recouered ought to conuert it to pay the damages for the death of her husband, seing that immediatly after his death she ought to haue her dower. Sr. though she ought to be endowed immediatly after the death of her husband, yet she can lay no title in the first writ the demaund her dower vpõ y ground, y that the tenant is not there to allegne it, or at lest wise there might not allegne it, for her y hath recouered dower vpõ disseisiõ wherevnto any woman hath title to haue dower, hath good auctho[illegible] as against the tenãt to take y writ to recouer her dower, & euery woman that doth vse the dower after the possession of the tenãt stoode against her, therefore although she recouer by action, that the reuersion stood vpon him against whõ she recouereth, though he were a disseisour & hauing not the reuersion by her recouery to hym & his right as vpon tenus antes for terme of life. And for this reason it is that the tenaunt for terme of life, & he in reuersion, & the husbande dyed seised of the tenemẽts &c. Sr. they may say to execute hym self in damages that he ans all tymes hath ben redy to yelde dower if it had ben demaunded. So he shal not be returned to doe in a writ of resonage whether in the case y thou remembrest

dowar, for in both cases the tenaunte be forpaste
by the writ to be wrongfully vsers, but it is not so in
this case, and so me thinketh it clere y the fore-
sayd case shal neuer be bound by law, nor con-
science to yelde damages for the time y passed be-
fore the request, but for the time after y request
is great doubt, he saieth, some thinke y he ought
there to yelde damages, because his title is
good, but is fallen before, and that it is her default
that she brought not her action. To this vnto the
same before the request I hold me content, such
right opinion so she assigne the dowar whenne
it is required, but whe he refuseth to assigne it, the
I thinke hir bound in conscience to yelde dama-
ges for both times, though he shal none recouer
by the law. And first as for the time after y re-
quest, it appeareth euidently that whe he denied
to assigne her dowar, he did against conscience, for
he did not that he ought to haue done by y law,
as he wolde haue done for him, y
do after y request her holdeth her dowar frō her
wrongfully, y ought in conscience to yelde dama-
ges therefore. And vnto the reason y thou al-
leagest in her, that she toke not her action, that
letteth litle, for notwithstanding he party will not do that he ought to do by right.
And for that he ought of right to haue done and
did it not, he can take none aduauntage, y then
as to the damages before the request, wee thin-
keth him also bounde to pay them, for when he
was required to assigne dowar and refused. It
appeareth y he neuer entended to yelde dowar frō
y beginning, y so he is a wrong doer in his owne
con-

conscience, and more ouer, if the husband die seised, the law is such, that if the tenant refuse to assigne dower when he is required, wherfore a woman bringeth a writ of dower against him in ye case the woma shal recouer damages also for the time before ye request as after, & yet he ought not in that case after thine opinion to haue yelded any maner of damages if he had be ready to assigne dower when it was demaunded, as some thinketh here. ❧ The cause in ye case that thou hast put, is for that the statut as generall that the tenaunt shal recouer damages, where the husbande died seised, & that hath here alway construed that where the tenant may not say y he is, & hath ben alway ready to yelde dower &c, y the demaundat shal recouer damages from the death of her husband. But in this case there is no lawe of the realme that helpeth ye demaundat, neither common law, nor statute, & furthermore though it might be proued by his refusel y he neuer intended fro the death of ye husband to assigne her dower, yet that proueth not, but that he had good right to take the profits of her third part for the time as he did as he had of his owne, & after ye request made, as is aforesaid, & so me thinketh that notwithstanding ye denyall, he is not bounde to yelde damages in this case, but for the time as the request, & not for y time before. ❧ For this time I am content with thy reason.

❧ The xij. question of the husband.

The xiij. Chapter.

L. iij.

A man leyeth of certeyn landes knowing that another hath good right and title to them leueth a fine with proclamation to the intent he would extinct the right of the other man, & the other man maketh no claime within the .v. yeres whether may he that leued the fine hold p̄ land in cōscience as he may doe by the law? D. By this question it seemeth that thou doest agree that if he that leued p̄ fine had no knowledge of the other mans right, that his right shoulde then be extincted by the fine in cōscience. D. Verely, for thou diddest shew a reasonable cause why it should be so in our first dialogue in Latin the xxiij. Chapter, as there appeareth. But if he that leued a fine and that would extinct p̄ right of another, knowing that p̄ other had more right then he, then I doubt therein for I take thine opinion in our first dialogue to be vnderstand in conscience, where he that would extinct former rights by such a fine with proclamatiō, knoweth not of any former title, but for hys more suerty if any such former right be: he taketh the remedy that is ordained by p̄ law. D. Whether doest thou meane in this cale p̄ thou puttest now that he that hath right, knoweth of p̄ fine & wilfully letteth the .v. yeres passe without claime or that he knoweth not any thing of p̄ fine? D. I pray thee let me know thine opinion in both cases, whether thou thinke p̄ he p̄ hath right be barred in either of p̄ said cases by cōscience as he is by p̄ lawe or not. D. I will in good sort herafter shew thee my mind therin: but at this time I pray thee geue a litle sparig & pa-

tēce

ceue now for this time to some other question.

¶ The xiii. question of the Student.

¶ The xv. Chapter.

A Man seysed of certeine landes in fee hath a daughter, which is his heire apparaunt, the daughter taketh a husband, and they haue issue. the father dieth seised, & the husband, as sone as he heareth of his death, goeth toward the land to take possession, & before he can come there, his wife dieth, whether ought he to haue ỹ lande in cōscience for terme of his life, as tenāt by ỹ curtesy because he hath done ỹ in him was to haue had possession in his wiues life, so ỹ hee might haue ben tenant by the curtesy according to the law, or ỹ he shal neither haue it by the law, nor conscience. D. Is it clerely holden in the lawe that he shal not be tenant by the curtesy in this case, because he had not possession in deede.

S. Ye verely, and yet vpon a possession in lawe a woman shal haue her dower, but no man shall be tenāt by ỹ curtesy of land, without his wife haue possession in deede. 1 Ed. 3: 15: b. 19. 6 R: 69: a. 14 H. 4. 64:

D. A man shalbe tenant by the curtesy of a rent though his wife die before the day of payment, & in like wise of an aduowson though she die before the auoidance. S. That is truth, for ỹ olde custome & maxime of the law is, ỹ he shal be so, but of land there is no maxime that serueth him but his wife haue possession in deede. D. And what is ỹ reason ỹ there is such a maxime in the

L. iij. lawe 6 R: 68: a. 14 H. 4. 15: b. 29: a. 92: 94: 8.

law of the rent & of the aduowson, neither then of lande, when the husband doth as much as in him is to haue possession and cannot. D. Some assigne the reason to be because it is impossible to haue possession in dede of ꝑ rent or of aduowson before the day of paiment of ꝑ rent, or before the auoidance of ꝑ aduowson. D. And so it is impossible that he shall haue possession in dede of land if his wife dye to soone that her may not by possibilitye come to the lande after his fathers death, and in her life as the case is. S. The lawe is such as I haue shewed thee before & I take ꝑ very cause to be for that there is a maxime set=teth for the rent & the aduowson, & not for the lands, as I haue said before, and as it is said in the viii. Chap. of our first dialogue, it is not al=way necessary to assigne a reason or consider=ation why the maxymes of the lawe of England were first ordeined & admitted for maxymes, but it sufficeth that they haue bene alway taken by lawe and that they bee neither contrary to the lawe of reason, nor to ꝑ lawe of god as this maxime is not, & therefore if ꝑ husbande in this case be not holpen by cõscience, he cannot bee holpen by the lawe. D. And if the lawe help him not, conscience cannot help him in this case, for con=science must alway be grounded upon some lawe, and it cannot in this case bee grounded upon the lawe of reason, nor upon the lawe of god, for it is not directly by those lawes, ꝑ a man shall be re=quired by & directly, but by the custome of ꝑ realm. And therefore if the custome help him not, he can nothing haue in this case by conscience, for

consci=

consciences neither absolutely by the law of nature, nor thereby nothing more, but where the law of man is in no sorte directly against the lawe of nature, or the lawe of god, & then properly to cannot be called a lawe but a corruption. Secondarily the generall grounds of the lawe of man touching matters particuler, are grounded upon the lawes of nature, as we may doe, and yet the lawe good, as it appereth in diuers places of the Digestes, Instit. & Codic. & elsewhere there is no lawe of man prouided for him that hath right of a thing by the law of reason, or by the law of god. And then sometime [illegible] consci-

conscience, for the law ꝓ fell was with him, is now against him, and therefore cõscience is altered in like wise as the law altereth, & diuers many cases like be in the law, were to long to rehearse now. And thus we thinke that if the husbande wife ꝓ husbãd in this case hath neither right by the law, nor conscience.

## ¶ The xvij. question of the Student.

## ¶ The xvij. Chapter.

A Grant is granted to a man in fee to peruse of the acres of land, & after the grãtour enfeoffeth the grantee of one of the said acres, saying that as the whole grant extendeth thereby in conscience as it is in the law. ¶ This case is very subtle to entreate, for it appeareth not whether the grantee claimed him in trust, or that he gaue the acre to him of his mere motion, and ꝓ his ꝓfound feoffment no bargaine was made but a bargaine, & it seemeth but only a feoffment in trust, that it abideth in the whole grant abideth in conscience though it be extinct in the law, & in that case methinketh y e same case in cõscience, for y e grant that y e grantee hath to the vse of y e grantour is euident, for he may not take y e profits of y e land & it is a great conscience y e he should leese both & in like wise it abideth in cõscience, for y e acre remaineth in y e hãds of y e grantour, though it be extinct in the law, for there was a default in y e grantour, & he should make the feoffment to the grantee, & seeing there was in y e grantee no

it. And it is no conscience that of his owne default he should take so great auail to be discharged of ꝑ whole rẽt, seing that the feoffement was made to his owne vse. And if the feoffees were made vpõ a bargaine & a contract betweene thẽ, then it is to see whether they remembred the rẽt in their bargaine, or ꝑ they remẽbred it not, & if they remẽbred in their bargaine & cõtract, then conscience must followe the bargaine as thus, yf they agreed that ꝑ graunte should haue the rẽt after the poꝛtion in the other acte, thẽ by cõscience he ought to haue it though it be extincted in the lawe. And if they agreed that the whole rẽt should be extinct & made their ꝓfite according then it is extinct in lawe & conscience, & if they merely forget it & made no mention of it, or for lacke of cunning take the lawe to be rẽt should continue in the other acte after poꝛtion, & made their ꝓfite according, pondering only the value of the acre that was sold: then me thinketh it may cõtinue in conscience after the poꝛtion, & if the feoffees were made to the vses of the graunte then it semeth the whole rent is extinct in lawe & conscience. ¶. Then take that to be the case that is to say that the feoffement was made to the vse of the graunte. D. What is then thine opinion therein?

¶. That the rent should abide in conscience after ꝑ poꝛtion for the acre remaining in the handz of the graunteour, notwithstanding it be extinct in the lawe. Doctour. Then shewe me thine opinion in this ꝑ I shall after thee. Of what lawe is it that graunteez of rent and of suche other

ꝓfi-

profits out of lands may be made and that they shalbe good & effectual to the grauntee, whether is it by the law of reason or by the law of God or by the custõe & law of ỹ realme. D. I think it is by the law of reason, for by the same reason that a man may geue away all his landes, he may as it semeth geue away the profits therof as to graunt a rent out of the land if he will. D. Why then by what law is it that a man may geue away his landes. I trow by none other law but by the custõe of the realm, for by statute all alienations & gifts of lãds may be prohibited, & that reason proueth not that grauntes of ỹ profits of land or of a rẽt should be good because they may alien the lande, if alienations of land be by custome & not by ỹ law of reason as I suppose it is, wherof I touched some what in my first dialogue in Latin the xix. Chapiter. And also if graunts should haue their effect by the law of reason then reason would ỹ they shoulde be good by the onely word of the grauntor as well as by his dede, & that is not so, for wont dede the graunt of rent is void in the law, & so me thinketh that grants haue their effect only by the law of the realme. D. (I put it to be so) what meanest thou thereby. D. I shall shewe you hereafter, as I shall shew thee the cause why I thinke ỹ rent is extinct in conscience, as well as in law. And first as I take it ỹ reason why it is extinct in the law, is because the rẽt by the first graunte going out of xl acres, & not going part out of the one acre, & part out of the other, but the whole rent going out of

[illegible] both, and then [illegible] the grauite of his owne
[illegible] [illegible] effect in y one acre whereby that
[illegible] is discharged, then the at her accesse must
[illegible] discharged vnles it should be supposed y
[illegible] will not that any apportionment should be
[illegible] case, but rather in as much as the party hath
[illegible] his owne act discharged the one acre by laws
[illegible] charged with the other, rather then to suffer
[illegible] other acre to be charged as many times, for
[illegible] grauite, for that it is begunne all by the act
[illegible] the party & not [illegible] haue heard, is called a rent
[illegible] common right, wherefore it is not found
[illegible] in the statute as a reason to [illegible] me think
[illegible] that for, although as it is not grounded by
[illegible] law of reason that grauite of rent should be
[illegible] out of lands, but by statute and law of
[illegible] realme as I haue said before, that so all the
[illegible] it remaineth to the last and vttermost of the
[illegible] to determine how long such rents shall
[illegible] continue. And when the law ceaseth, such rents
[illegible] be voided: I suppose that is both reasonable
[illegible] accept the iudgement of the law be against
[illegible] law of reason or the law of God, as it is
[illegible] in this case, for in this case he that taketh
[illegible] aduantage hath profit by the statute and
[illegible] directly [illegible] hath such a great aduantage of the lande,
[illegible] that this purchase should not rise to, whereby
[illegible] appeareth that he assenteth vnto the lease
[illegible] thereto he was not compelled, and that is his
[illegible] act and his owne default to do, which
[illegible] extinct his whole rent as well in conscience
[illegible] in the law. But if he haue no profite of
[illegible] lande or be in no paine that he hath such a

rent

rent out of the land which is called ignorance
of the deede, or if he be ignorant that the rent
would extend his whole rent thereby, which is
called ignorance of the law, then the right
remaineth in conscience after the prescription.
Ignorance of the law or of the deede helpeth
not but in few cases in the law of England.
And therefore it must be referred by conclusion
that is to say by the law of reason, for what is
generall ignorance of y. law be in any particular
cases against the law of reason, as the ignorance
mesne to be, because it excepteth not the right
ignorance though it be an ignorance unmeetable, or
doth it not agree with the law of reason.
Me thinketh that ignorance in this case helpeth
little for whosoever may hapeth any land or rent
it of y gift or any other, he taketh it of his
will, so that if the title be not good ignorance
not helpe, for y tenter must beware what he tak-
eth, & so in this case of the taking of one as
should extend the whole rent in existence, if he
were not ignorant, so me thinketh it should
not helpe extend it also though he be ignorant
the law of the deede, for every man must be
called to take notice of his owne title & not
what lad his rent is going, & so me thinketh
ignorance is but litle to be considered in this ca-
se. If a man buy land or taketh it of the gift
an other it is reason, he take it forth the
still though he be ignorant that an other h
right, for it were not standing with reason
his ignorance should extend the right of an
ther, but in this case ther is no doubt of y right

diuers-

whole rent shalbe extinct in the lawe. S. The rent cannot be whole going out of the acre ꝑ the graūtour hath, for this recouery is vppon a lapsed title, and the graūtour because hee is a straūge to it shalbe well receiued to saluo it. But if the recouery had bene vpon a true title, then it had ben as thou saist, for if the graūtee recouer the one acre against the graūtor vpon a true title, the graūtour shall paye the whole rent out of that land that remaineth in his hand as to the vse it maketh no matter to the graūtee as to the lawe in whom the vse be, for the possessiō hath the vse equipollyth the whole rent as against him in the lawe as well as if ꝑ possession and vse were both ioined togethers in the graūtee. D. Then me thinketh that the lord Henry Harte is bounde in conscience to pay the graūtee the rent after the portion of ꝑ acre that was recouered, for it cannot stande with conscience that he should lose his rent & haue no profites of the lande. S. Then of whom shall he haue ꝑ other portion of his rent. D. As I haue here that the acre that the graūtor hath shalbe in this case discharged in the lawe. S. Take the lawe so.

D. And what in conscience? S. As against the graūtour me thinketh also it is extinct in conscience for the reason that thou hast made in the .xvj. Chapiter, for it is all one in conscience in this case as against the graūtour, whether the recouerye were to the vse of the graūtee or not, specially seynge that the graūtour is not party to the recouery, for the vnity of possession

is the cause of extinguishmēt of the rent against the graūtor both in law and conscience, where so euer the vse be, but if the graūtour had ment giuing to the cause of the extinguishment, as he was in the case that I put in the last Chapter, where the graūtour enfeoffed the graūtee of one of the acres, to the vse of the graūtee, there it is not extinct in conscience in that acre that remaineth in the handes of the graūtor, though it be extincted in the lawe, because hee was priuie to the extinguishment himselfe, but hee is not so in this case, & therfore it is extinct against him in law & cōscience. And therefore me thinketh that the graūtee shall in conscience haue the whole rent of the saide Henry Hart, that caused the said recouery to be had in his name, for in him was al the default, but it is to be vnderstand that in all the cases, where it is said before in this chapter, or in the chapter next before, that the rent is extinct in the lawe, and not in conscience, that in such case, all the remedyes that the party might first haue had for the rent at the common law by distresse, assise, or otherwise, are determined, and the party that ought to haue the rent in conscience, shalbee driuen to sue for his remedy by Sub pœna. D. I am cōtent with thy conceipt in this matter for this time.

¶ The xvj. question of the student.

¶ The xviij. Chapter.

A villaine is graunted to a man for terme of
life, the villayne purchaseth landes to him
and to his heires, the tenāt for terme of life en-
feoffeth, in this case by the lawe hee shal enioy the
lands to him and to his heires, whether shal he
do so in like wise in conscience?

D. Me thinketh it first good to see whether
it may stande with conscience that one manne
may claime an other to be his villeine, and that
he may take from him hys landes and goods,
and put his body in prison if he will, it seemeth
he loueth not his neighbour as hym selfe that
doth so to him.

S. That lawe hath bene so longe vsed in this
realme and in other also, and hath bene admyt-
ted so long in the lawes of this realme, and of
diuers other lawes also and hath ben affirmed
by Bishops, Abbotts, Priors, and many other
men both spirituall and temporall which haue
taken aduauntage by the sayed lawe, and haue
seised the landes and goodes of their villeines
thereby, and cal it their right enheritence so to
be, that I thinke it not good nowe to make a
doubt, no to put it in argument whether it stād
with conscience or not, and therefore I praye
thee, admitting the lawe in y maner to stande
in conscience, shewe me thine opinion in y quel-
tion that I haue made.

D. In the lawe clere that he that hath the vil-
laine but only for the terme of life, shal haue the
landes that that villain purchaseth in fee to him
& to his heires. S. Ye verely I take it so. D. I
should haue taken y lawe otherwise, for it is a selg

nozy be granted to a man for terme of life and the tenant attourne, & after the land eschete the tenant for terme of life entreth, he shall have there none other estate in the land then hee had in the seigniozy, and me thinketh that it should be like lawe in this case, & that the lozd ought to haue in the land, but such estate as hee hath of the villeine. D. The cases be not a like, for in case of the eschete the tenãt for terme of life of the seigniozy, hath the landes in the lieu of the seigniory, that is to say, in the place of the seigniozy, and the seigniozy is clerely extinct, but in this case he hath not the lande in the lieu of the villeine, for he shal haue the villeine still, as he had before, but he hath the lands as a profit comy by meanes of the villeine, which hee shall have in like case as the villeine had them, that is to say, of all goods and cattells hee shall haue the whole property & of a lease for terme of yeares he shal haue the whole terme, and for terme of life he shal haue the same estate, the lozde shall have the lande during the life of the villeine and of land in fee simple, and of an estate taile that the villeine hath, the lozde shall haue the whole in fee simple, although hee had the villeine but only for terme of yeares, so that hee entre or seise according to the lawe before the villeine alien, or els he shall haue nothing.

D. Verely, and if the lawe bee so, I thinke conscience followeth the lawe therein, for admitting that a man may with conscience haue an other man to bee his villeine, the iudgement of the lawe in this case as to determine what estate

Lozd

Lord hath in the land by his entre is neither a-
gainst the law of reason nor against the law of
God, and therefore conscience must followe the
law of the realme, but I pray thee let me make
a litle digression to here thine opinion in an o-
ther case touchyng that pertaining to the question, as
is this, if an executor have a lycence, that his
testator had for terme of yeres, & he purchaseth
lands in fee, and the executour entreth into the
land, what estate hath he by his entre.

S. In fee simple, but that shalbe to the behoufe
of the testatour & shalbe an assetes in his hades.

D. Well then I am contented with thy con-
sent at this time in this case, and I pray thee
procede to another question. S. For almuch
as it appeareth in this case and in many other be
cause that the knowledge of ỹ lawe of Englande
is right necessary for the good ordering of con-
science: I would heare thine opinion, if a man
shulde take the lawe what daunger it is in conscience
by the mistakinge of it. D. I praye thee put
some case in certaine therof that thou doubtest
in, and I will with good will shewe thee my
minde therein, for els it will be somewhat long
or it can be plainely declared, and I
would not be tedious in
this writinge.

¶ The xvij. question of the
Studente.

¶ The xix. Chapiter.

A Man hath a villeine for terme of life, ỹ villaine purchaseth landes in fee as in the case of the last chapter, and the tenaunte for terme of life entreth, and after the villaine dyeth, hee in the reuersion pretendinge, that the tenaunte for terme of life hath nothing in the lande, but for terme of life of the villaine, asketh counsaile of one that sheweth him that hee hath good right to the land, and that he may lawfully enter, and through that counsaile hee in the reuersion entreth, by reason of the which entre, great suites and expenses follow in the lawe, to the great hurt of both parties, what daunger is this to him that gaue the counsaile. D. Whether meanest thou that hee that gaue the counsaile, gaue it willingly against the lawe, or that hee was ignoraunt of the lawe. S. That he was ignorant of the lawe, for if he knewe the lawe, and gaue counsayle to the contrary, I thynke hym bounde to restitution both to him against whom he gaue the counsaile, and also to his clyent (if he would not haue sued, but for his counsaile, of all that they bee dampnified by it.

D. Then wil I yet further aske thee this question, whether he of whom hee asked counsayle gaue himselfe to learning, & to haue knowledge of the lawe after his capacity, or ỹ he toke vpon him to geue counsaile, & toke no study cõpetent to haue learning, for if he did so, I thinke he be bounden in conscience to restitution of all the costes, & damages that he sustayned to whom hee gaue counsayle, if hee would not haue sued but throughe hys counsayle. And also to the

other

other party, but if a man that hath taken sufficient study in the lawe, mistake the lawe in some point that is hard to come to the knowledge of, he is not bounden to such restitution, for hee hath done that in him is, but if such a man knowing the lawe giue counsaile against ȳ lawe: he is bound in conscience to restitution of costs and damages as thou hast saide before, & also to make amends for the vntruth.

S. What if hee aske counsaile of one that hee knoweth is not learned & he geueth him counsaile in this case to enter, by force whereof hee entreth. D. then be they both bound in conscience to restitution, that is to say, the party if he be sufficient, & els the counsailour because he assented and gaue counsaile to the wronge.

S. But what is the counsailour in that case bounden to him that he gaue counsaile to.

D. To nothing, for there was as much default in him that asked the counsaile, as in him that gaue it, for hee asked counsaile of him that hee knewe was ignorant, and in the other was default for the presumption, that hee would take vpon him to geue counsaile in that hee was ignorant in. S. But what if hee that gaue the counsaile knewe not but that hee that asked it, had trust in him, that he coulde and would geue him good counsaile, and that he asked counsayle for to order well his conscience, howbeit, that the truth was, that hee coulde not so doe.

D. Then is he that gaue the counsaile bounden to offer to the other amendes, but yet the other may not take it in conscience. S.

That were somewhat perilous, for happely he would take it though he haue no right to it, except the worlde be well amended. D. what thinkest thou in that amendement. S. I trust euery man will doe now in this worlde as they would be done to, speake as they thinke, restore where they haue done wronge, refuse money if they haue no right to it, though it be offred them doe that they ought for to doe by conscience, & though that they cannot be compelled to it by no lawe, & that none will geue counsaile, but that they shal thinke to be according to conscience, & if they do, to doe y they can to reforme it, & not to entermit themselues in such matters as they be ignorant in, but in such cases to send them y aske the counsaile to other, that they shal thinke be more cunning then they are.

D. It were very wel if it were as thou hast said, but the more pity is, it is not alway so, & especially there is great default in geuers of counsaile, for some for their owne lucre, and praise geue counsaile, to comfort other to sin that they know we haue no right, but I trust there be but fewe of them, and some for dreade, some for fauour, some for malice, and some vpon considerations and to haue as much done for them an other time to hide the truth. And some take vpon them to geue counsaile in that they be ignorant in, and yet when they know the truth will not withdraw that they haue mis done, for they thinke it should be greatly to their rebuke, and such persons follow not this counsaile that sayth. That we haue vnadvisedly vowed let vs

with

with good aduise resiste against.) S. And if a man geue counsaile in this realme after ye lyes learning & conscience geueth him, & regardeth not the lawes of ye realme, geueth he good counsaile? D. If the lawes of the realme be not in that case against the law of God nor against ye law of reason, he geueth not good counsaile for euery man is bound to followe the lawes of the countrey where he is, so it be not against ye sayd thinges & so may the cases be, that he may bynde himselfe to restitution. S. At this time I will no further trouble thee in this question.

## ¶ The xviij. question of the student.

## The xx. Chapiter.

If a man of his meere motion geue landes to Henry Hart and to his heires by indenture vpon a condition that he shal yerely at a certain day pay to John at Style out of the same land fourten rent, and if he doe not, that then it shall be lawful to the said Jo. at Style to entre &c. if the rent in this case be not paied to John at Style, whether may the sayd John at Style come into the landes by consequence though he may not enter by the lawe. D. May he not enter in this case by the lawe, sith the wordes of the couenaunt be that he shal enter. S. Verily, for there is an auncyent maxime in the lawe that no man shall take aduauntage in a case but he yt is partye or privy to the condition, and this man is not partye nor privye

where-

wherfore he shal haue none aduantage of it.

D. Though he can haue none aduauntage of it as party, yet because it appeareth euidently ꝑ intent of the geeuer was, that if hee were not paied of the rent that he should haue, land: It semeth that in conscience he ought to haue it thoughe he can not haue it by the law.

S. In many cases the ētent of ꝑ party is voyd to al entents if it be not grounded according to the law. And therefore if a man make a lease to another for terme of life, & after of his meere motion he confirmeth his estate for terme of life to remayne after his death to an other and to hys heires, in this case that remainder is voyde in lawe and conscience, for by the law there can no remainder depend vppon no estate, but that the same estat beginneth at the same time that the remainder doth, and in this case the estat began before, and the cōfirmation enlarged not his estate, nor gaue him no new estate, but if a lease be made to a man for time of an other mans life, and after the leassour only of his meere motion confirmeth the lande to his lesse for terme of his owne lyfe, the remainder ouer in fee, this is a good remainder in the lawe and conscience, and so me thinketh the intent of the party shal not be regarded in this case. D. And in the first case that thou hast put, me thinketh though it passe not by way of graunte of that, yet it shal passe, as by the way of remainder of the reuersion, for euery deede shalbe taken most strongly gainst the grauntour, and the taking of ꝑ lease in this case is an attornement in it self.

S.

S. That cannot be, for he in the remainder is not party to the dede & therefore it can not be taken by the way of graunt of the reuersion, for no graunt can be made but to him ỹ is party to ỹ dede, except it be by way of remainder, & therfore if a man make a lease for terme of life, & after the lessour graunt to a straunger that ỹ tenant for terme of life shall haue the land to hym and to his heires, that graunt is void if it be made only of his meere motion without recompence. And in likewise if a man make a lease for terme of life, and after graunt the reuersion to one for terme of life, the remainder ouer en fee, & the tenant attourneth to hym that hath the estate for terme of life onely, entending ỹ he onely should haue aduantage of the graũt, his entẽt is void & both shal take aduantage therof, & the attornement shalbe taken good, according to the graunt, and so in this case though the feoffour entended that if the rent were not paied: that ỹ straunger should enter, yet because the law geueth him no entre in ỹ case, that intent is void and the same straũger shall neither enter into ỹ land by law nor conscience. D. What shal then be done with that lande as thou thinkest after the condition broke S. I thinke that the feoffour in this case may lawfully reenter, for whē the feoffement was made vpon condition that ỹ taker would pay a rent to a straũger, in those wordes is concluded in the lawe that if the rent were not paied to the straunger that ỹ feoffour should reenter for those wordes, vpō condiciō imply so much in ỹ law though it be not expressed.

No. 6. 61.

And

And then whē the feoffour went further & said that if the rent were not paid that the straūger should enter, those wordes were holde in ꝑ lawe and so the effect of the dæde stood vpon the first wordes wherby the feoffour may reēter in lawe & conscience, but if the first wordes had not been conditional. I would haue holden it the greater doubt. D. I pray thee put ꝑ case thereof in certeine in such wordes as be not conditionel ꝑ I may the better perceyue what thou meanest therein.

## ¶ The xix. question of the Student.

## ¶ The xxj. Chapiter.

A Man maketh a feoffement by dede endented & by the same dæde it is agreed, that ꝑ feoffe shal pay to I. B. & to his heires a certeine rent yerely at certeine dayes, & that if he pay not the rent, thē it is agreed ꝑ I. B. or his heires shal enter into ꝑ lād, & after the feoffee payeth not the rent then the question is who ought in cōscience to haue this lande and rent. D. ere we argue what conscience wil, let vs knowe first what the lawe wil therein. S. I thinke that by the lawe neither the feoffour ne yet the sayd I. B. shall neuer enter into ꝑ land in this case for non payment of the rent, for there is no reentre in this case graūted to ꝑ feoffour for not paimēt of ꝑ rent as there is in the case next before, & the entre is geuen to ꝑ said I. B. for not paiment there is holde in the lawe because he is straunger to

the dede as it appeareth also in the next chapter before. And therefore me thinketh that ỹ greatest doubt in this case is to se to what vse this feffement shalbe taken.

M. There appeareth in this case as thou hast put it, no consideration ne recompence geuen to the feffour, whereupon any vse may be deriued, and if the case be so in dede, and that the feffour declared neuer his minde therein, to what vse shal it then be taken. &c. I thinke it shalbe take to be to the vse of the feffee as long as he payeth the rent, for there is no reason why the feoffee should be bulied with payment of the rent hauing nothinge for his labor, ne it may not conuiuently be take that the intent of the feoffour was so, except he expressed it, & then it must bee taken he that entended to recopence the feffee for the bulines that he should haue in the payment ther, and by the wordes following his intēt appeareth to bee so as mee thinketh, for if the rent were not paid, he would that A. B. should enter, & so it seemeth he entended not to haue any vse himself, & thus me seemeth this case should vary from the common case of vses, that is to say, if a man seysed of lande make a feoffement thereof: and it appeareth not to what vse ỹ feffement was made, ne it is not vpō any bargain or other recompence, then it shalbee taken to be to the vse of the feoffour, except the contrary can bee proued by some bargayne, or other like, & that his entent at the tyme of the liuery of seysin was expressed that it shoulde bee to the vse of the feoffee or of some other, and then is

shall

shal go according to his entent, but in this case me thinketh it shalbe take that his entent was that it should stil be to the vse of the feoffee for the cause before rehersed except the contrary can be proued, and so ꝑ knowledge of the entent of the feoffor is ꝑ greatest certeintie for knowledge of the vse in this case as meseemeth: but when the feffour goeth further and saieth that if the rent be not paide that then the said .A. should enter into the land, thē it appeareth that his intent was that the rent shoulde cease, and ꝑ .A. shoulde enter into the lande, ꝛ though he may not by those wordes enter into ꝑ lande after the rules of the law, and to haue frēhold, yet those wordes seeme to be sufficient to proue that the entent of the feffor was that he should haue the vse of the land, for sith he had the rent to his owne vse, and not to the vse of the feffour, so it seemeth he shal haue the vse of ꝑ land that is alligned to him for that payment of the rent. D. but I am somewhat in doubt whether he had ꝑ rent to his owne vse: for the entent of the feoffour might bee that hee should pay the rent for him to some other, or some other vse might be appointed therof by ꝑ feoffour. S. If such an entent can be proued: then the intent must be obserued, but we be in the case to seeke to what vse it shalbe taken if the entent of the feoffour cānot be proued, and then mes thinketh it cānot be otherwise take, but that it shalbe to the vse of him to whom it shoulde bee paide, for though it bee called a rent, yet it is no rent in the law, ne in the lawe hee shall neuer haue re-

medy

medy for it, though it were assigned to him, and to his heires without condition, neither by distres, by assise, by writ of annuity nor otherwise, but he shalbe driuen to sue in the chauncery for his remedy, & then when he sueth in ꝑ chauncery he must surmit ꝑ he ought to haue it by conscience, and that hee can haue no remedy for it in the lawe. And then, sith hee hath no remedy to come to it but by the way of cõscience, it semeth it shalbe taken that when hee hath recouered it that he ought to haue in cõscience, & that to his owne vse without the contrary can bee proued, and if the contrary can be proued, and that ꝑ intent of the feoffour was that hee should dispose it for him as he should appoint: then hath he the rent in vse to an other vse, and so one vse should be depending vppon another vse, which as seldome seene, and shall not bee intended till it bee moued: & so, sith no such matter is here expressed, me thinketh the rent shalbe taken to bee to the vse of him that it is paide to, & the lande in likewise that it is appointed to him for not payment of ꝑ said rent, shalbee also to his vse, how thinkest thou will serue conscience therein.

D. I thinke that as thou takest the lawe, now that conscience (in this case) and the lawe bee all one, for the law searcheth the same thing in this case, to know the case that cõscience doth, that is to say, thentent of the feoffour, & therefore I would anoye thee further in one thing.

S. What is that?

D. That sith ꝑ entent of ꝑ feoffor shalbe so much regarded in this case: why it ought not also to

to be almuch regarded in the case that is in the
last chapiter next before this, where the words
be conditional, & geue the feffour a title to en-
tre, for me thinketh that though the feffee
in that case entre for the condition broke, that
yet after his entre he shalbe seised of the
after his entre to the vse of him to whome the
land was assigned by the said indenture for lack
of paiment of the rent, because the intent of the
feffor shalbe taken to be so in that case allwaies
in this. And I pray thee let me knowe thy mind
what diuersity thou puttest betweene them.
Thou driuest me nowe to a narrowe diuersite,
but yet I will answere thee therein as well as
I can. D. But first ere thou shewe me that di-
uersite: I pray thee shewe me howe vses began
& why so much land hath ben put in vse in the
realme as hath bene. Sh. I will with good will
say as me thinketh therein.

## How vses of lande first began, & by what
## reason, & the cause why so much
## land is put in vse.

## The xxij. Chapiter.

When were returned by a secondary conclusi-
on of the law of reason in this maner, after
the general customs of property. Seeing that
man made his diuine good true and necessarie
laws brought in among the people. It followeth
of reason that such lands and goodes as a man
hath, ought not to be taken from him but by his
assent

assent or by order of a lawe, & the firth it is so that every man y hath landes, hath thereby .ij. thinges in him, that is to say, the possession of the lande which after y lawe of England is called y franktenement of the freehold, & the other is authority to take thereby the profits of y land, whether it be of duety that he y hath land, & intendeth to geve only the possession and freehold thereof to an other, and to keepe the profits to himselfe ought in reason and conscience to have the profits lastinge there is no lawe made to prohibite, but that in conscience such reservation may be made. And when a man maketh a feoffement to an other, & intendeth that he himselfe shal take y profits, then the feffee is saide seised to his vse y enfeffed him, that is to say, to the vse that he shall have the possession & freehold thereof as in the lawe, to the intent that the feffor shal take y profits, & vnder this maner as I suppose vses at first began. D. It seemeth that the reteyninge of such vse is prohibited by y lawe, for if a man make a feoffement & reserue the profits, or any part of the profits, as grasse, wood, or such other, that reservation is voide in y lawe, and me thinketh it is all one to say y the lawe iudgeth such a thing if it be done to be voide, & that the lawe prohibiteth that the thing shal not be done. M. Truth it is, thou such reservation is voyde in the lawe as thou saiest, & that is by reason of a statute in the lawe, that willeth that such reservation of part of the same thinge shalbe voyde in the lawe, but yet the lawe doth not prohibite that no such reservation shalbe made,

but if it be made, it iudgeth of what effect it shal
be, that is to say, that it shalbe voide, & so her
making such reseruatiō auoideth no lawe therby,
ne breaketh no lawe therby, & therfore preter-
mission in cōscience is good, but if it were proui-
ded by statute þ no man should make such re-
seruation, ne than no feffement of truste should be
made, but that al feffements should yee to the vse
of him to whom possession of the land is geuen:
then the reseruatiō of such vses against the sta-
tute should be voide, because it were against the
lawe, & yet such a statut should not be a statut a-
gainst reason because such vses were first grou-
ded, & reserued by þ lawe of reason: but it should
preuent the lawe of reason, & should put away þ
consideration whereupon þ lawe of reason was
grounded before the statute made. And then to
other question, that is to say, why so much lan
hath ben put in vse, it will be somewhat long, &
peraduenture to some tedious, to shew al þ cau-
ses particulerly, but the very cause why the vse
remained to the feffor notwithstanding the ofter
feffement or fine, & sometime notwithstanding
a recouery against him is all vpon one considera-
tion after the cause and entent of the gift, fine,
or recouery, as aforesaid. W. though reason may
serue that vpon a feoffement a vse may be reser-
ued to the feoffor by the intent of the feoffour a-
gainst the course of his gift as thou hast said
before, yet I maruaile how such an vse may be
reserued against a fine that is one of the highest
records that is in the lawe, and is taken in the
lawe of so high effect that it shoulde make an

end

ende of all strifes, or against a recouery that is
eschewed in the lawe, for the that be wronged to
recouer their right by processe thinketh that great
inconuenience and hurt may follow when such
wordes may so lightly ber annexed by a secret
intent, or dis of the parties, & by a nude, & bare
auerment, and matter in deede, & specialye sith
such a matter in deede may ber alleaged, that is
not true wherby may rise great strife betwene
the parties, and great confusion, & uncertainety
in the lawe; but neuertheles sith our intent is
not at this time to treate of that mate, I pray
the touch shortly some of the causes why there
hath bin so many feoffementes in estate of lands, to
the vse of other as there shalbe, for as I here
say seuer men be sale seised of their owne land.

2. There hath bin many causes thereof, of the
which some be put away by diuers statutes, & 1 R. 123. a
some remaine yet; wherfore thou shalt vnderstand
that some haue put their land in feffementes secret-
ly, to the intent that they that haue right to the
land should not know against whom to bring their
action, & this somewhat remedied by diuers sta-
tutes, that giue actions against persones, & ta-
kers of the profits. And sometime such feoffe-
mentes of truste haue bin made to haue mainte-
nance & bering of their feffees, which peraduen-
ture bere great lordes or rulers in the countrey, and
therefore to put away such maintenance: treble
damages hee geuen by statute against them
that make such feoffementes for maynteinance.
And sometyme they were made to the vse of
Mortmaine which might then be made with-

out forfaiture thereof it were prohibited, that
freehold might not be geue in mortmain. But
is put away by ꝑ statute of ill chord the fecond.
And sometime they were made to defraude the
Lordes of wardes, reliefes, harlotes, and of the
landes of their villaines, but those pointes be
put away by diuerse statutes made in diuerse
of king Henry ꝑ viij. Sometime they were made
to auoide executions vpō statute Stapl', statut
marchant, & recognisaunce, & remedy is prouided
for that, that a man shal haue execution of al such
lands as any person is seised of to the vse of him
that is so bound at the time of execution sued in
v yere, yeare of ꝑ. ꝑ 7. And yet remaine fefeffats
fines, & recoueries in vse for many other causes,
in maner as many as there did before the said
statute. And one cause why they bee yet vsed,
is to put away tenaunty by the curtesy &
titles of dower. Another cause is for that land
in vse shal not be put in execution vpō a statute
Staple, statute marchat, nor recognisaunce, but
such as be in the handes of the recognisor at the
time of the execution sued. And sometime lands
be put in vse that they should not be put in exe-
cution vpon ꝑ wyll of Testandi facultas ad valentiam.
And sometime that vses be made ꝑ her to whom
vse &c. may declare his will theron, & sometime by
diuerty of diuerse conenants in indentures of ma-
riage & other bargaines, and these two last ar-
ticles be the chiefe and principall causes why so
much land is put in vse. Also landes in vse be no
assets neither in a fourmedon, nor in an action of
debt against the heire: ne they shal not be put
in

1 R. 123: a

Stat. 50. H. 8. c. 7.
1 Hen. 29. a.
1 R. 124. b. K.
123: b.

Stat. 29. Car. 2
cap. 3. fait hereto en Ley, affets en Demaine del heir

in execution by an Elegit sued vpon a recouery as some men say, & there be the very chiefe causes as I nowe remembre why so much lande standeth in vse as there doeth, & al the said vses be reserued by ꝑ intent of the parties vnderstād or agreed betwene the, & that many times dyuerly against the wordes of feoffement, fine, or recouery, & that is done by the law of reason as is aforesaid. D. May not an vse bee alligned to a straunger as wel as to be reserued to the feoffour if the feoffour so appointed it vpon his feoffement? S. Yes as well, and in lyke wyse to the feoffee & that vpon a free gift wout any bargain or recompence if the feoffour so will. D. What if no feoffement bee made but that a man graunt to his feoffee ꝑ frō thence forth he shall stād seised to his owne vse, is not ꝑ vse chāged though there be no recompence. S. I thinke yes, for there was an vse in Elle before the gift which hee may as lawfully gene away as he might the lande if he had it in possession. D. And what if a man being seised of lande in fee graūt to another of his mere motiō wout bargaine or recōpence that he frō thenceforth shall be seised to the vse of the other, is not that grāt good. S. I suppose ꝑ it is not good, for as I take the law: a man cannot cōmence an vse but by liuery of seyson or vpon a bargaine or some other recompence. D. I hold me contēted with that thou hast said in this Chap. for this time, & I pray thee shewe me what diuersitie thou puttest betwene those ij. cases ꝑ thou hast before rehearsed in the xx. Chap. and in the xxj.

Chapiter of this ꝓsent bwke. ℣. I will with
gods wil.

¶ The diuersitie betwene two cases here af-
ter follow, whereof one is put in the xx.
chap. & the other in the xxi. Chapit.
of this ꝓsent bwke.

## ¶ The xxij. Chapiter.

The first case of the said two cases is this. A
man maketh a feoffement by deede indented
bypon a condition that the feoffee shal pay cer-
teine rēt yerely to a straunger &c. & if he pay it
not: ꝑ it shalbe lawful to ꝑ straūger to ent into
ꝑ lād. In this case I said before in ꝑ xx. chap. ꝑ
the straūger might not enter, because ꝑ he was
not ꝓuy vnto ꝑ conditiō. But I said that in
that case ꝑ feoffour might lawfully rēentre by
ꝑ first wordes of ꝑ endēture because they imply
a cōditiō in ꝑ law, & ꝑ the other wordes (ꝑ is to
say) that ꝑ straūger should ent, be void in law
& conscience. And therfore I said farther ꝑ whē
the feoffour had rēentred that he was seysed of
the lande to his own vse & not to the vse of the
straūger, though his entent at the makinge of
the feffement were that the straunger after his
entre shoulde haue had the lād to hys owne vse
if he might haue entred by ꝑ law. And ꝑ cause
why I thinke that the feoffour was seysed in
that case to his owne vse I shall shew thee af-
terwarde. The secōd case is this, a man maketh

a fef-

a feffement in fee, & it is agreed vpon the feffemẽt that the feoffee ſhall pay a yerely rẽt to a ſtrãnger, & if he pay it not, that then ỳ ſtrãnger ſhall enter into the lãd. In this caſe I ſaid as it appereth in the ſaid xxij. Chap. ỳ if the feoffee paid not the rent: that the ſtraunger ſhould haue the vſe of the land though he may not by the rules of the law enter into the lãd, & the diuerſity betwene the caſes me thinketh to be this. In the firſt caſe it appeareth as I haue ſayd before in the ſaid xx. chap. that ỳ feoffour might lawfully reenẽ by the law for not paimẽt of rent, & then when he entred according: he by the entrie auoided the firſt liuery of ſeyſo, in ſo much, that after the reenẽ he was ſeyſed of ỳ lãd of like eſtate as he was before the feoffemẽt. And ſo remaineth nothing, wherupon ỳ ſtraunger might ground his vſe, but only the bare graunt or entent of the feoffour when he gaue the lãd to ỳ feoffee vpon condition that he ſhould pay ỳ rent to the ſtraunger, & if not, that it ſhould be lawful to the ſtraunger to enter: for the feoffement is auoided by the reẽtre of the feffor as I haue ſaid before, & as I ſaid in the laſt Chapiter, as I ſuppoſe a nude or bare graunt of hym that is ſeyſed of land is not ſufficient to beginne an vſe vpon. D. A bare graunt may chaunge an vſe as thou thy ſelfe agreẽſt in the laſt chapyter, why then may not an vſe as well beginne vpon a bare graunt. S. When an vſe is in eſſe he that hath the vſe may of his mere motion geue it away if he wil without recõpence, as he might the lande if he had it in poſſeſſyon

but I take it for a ground þ he cannot so begin an vse without liuery of seyson or vpon a recõpence or bargaine, & that there is such a ground in the law þ it may not so begine it appeareth thus it hath be alway holde for law þ if a man make a dede of feoffement to another & deliuer þ dede to him as his dede, that in that case he to whom the dede is deliuered hath no title medling w̄ the land afore liuery of seyson be made to him, but onely that he may enter & occupy þ land at the wil of þ feoffour, & there is no booke sayth that þ feoffour in that case is seised therof before liuery to the vse of the feoffee. And in likewise if a man make a dede of feoffement of two acres of land that lie in two shires intending to geue them to the feoffee, & maketh liuery of seisõ in the one shire & not in the other, in this case it is cõmonly holden in bookes that þ dede is void to the acre wher no liuery is made except it lie witin þ view, saue only þ he may entr & occupy at wil as is afore saide, & there is no booke that saieth that the feoffee shoulde haue þ vse of the other acre, for if an vse passed therby then were not the dede void to al intents, & yet it appeareth by the words of the dede þ the feoffour gaue þ lãds to the feoffee, but for lacke of liuery of seison the gift was void, & so me thinketh it is here, wout liuery of seisõ be made according, but in the secõd case of the said .ij. cases the feoffee may not reenter for non paimt of the rent & so the first liuery of seyson continueth & standeth in effect, and therupõ the first vse may well begins and take effecte in the straunger

of the land when the rēt is not paied vnto him accordyng to the firſt agreemēt. And ſo me thinketh that in the firſt caſe the vſe is determined becauſe the liuery of ſeaſon whereupon it commenced is determined, and that in the ſeꝛōd caſe the vſe of the lande taketh effect in the ſtraunger, for not paymēt of the rent by the graunt made at the firſt liuery which yet continueth in his effect, & this me thinketh is ꝓ diuerſitie betweene ꝓ caſes. ℣. Yet notwſtanding the reaſō that thou haſt made, me thinketh yt a mā ſeyſed of lāds maketh a gift thereof by a nude ꝓmiſe wout any liuery of ſeaſon, or recompēce to him made: & graūt that he ſhalbe ſeiſed to hys vſe that though the ꝓmiſe be void in the lawe, that yet neuertheleſs it muſt hold & ſtād good in ſuſcience & by the lawe of reaſō, for our rule of the lawe of reaſon is, that we may doe nothing againſt the trouth, and ſith the trouth is ꝓ the owner of the groūd hath graūted that hee ſhall be ſeiſed to the vſe of the other: that graūt muſt nedes ſtand in effect or els there is no trouthe in the grauntour. ℟. It is not againſte the trouth of the grauntour in this caſe though by ꝓ graunt he be not ſeiſed to the vſe of the other but it ꝓueth that he hath graunted, that the lawe will not warrant him to graūt, wherefore his graunt is voide. But if the grauntour had gone farther and ſaid that he would alſo ſuffer the other to take the proūtes of the lands wyth out let or other interruption, or that he would make hi eſtate in ꝓ lād whē he ſhould be requiꝛed, then I thinke in thoſe caſes he were bound

in

in conscience by that rule of the law of reason thou hast remedyed to performe thē, if he intended to be bounde by his promise for els he should go against his owne trouth & against his owne promise. But yet it shal make no vse in that case, nor he to whom the promise is made shall have no actiō in the law vpō that promise, although it be not performed, for it is called in the law a nude or a naked promise. And thus me thinketh that in the first case of the said two cases the graūt is now avoided in the law by the reentre of the feffour, & that the feffor is not bounden by his graunt neither in law nor conscience, but in the secōd case he is bound so that the vse passeth frō him as I have said before. D. I holde me cōtēt with thy cōceipt for this time, but I pray thee shew me somewhat more at large what is taken for a nude contract or a naked promise in the lawes of England, & where an action may lye thereupon & where not. S. I will w god will say as me thinketh therein.

## What is a nude contracte or naked promyse after the lawes of England, and whether any action may lye thereupon.

## The xxiiij. Chapiter.

FIrst it is to be vnderstand that contracts is grounded vpon a custome of the realme & by the law that is called (Ius gentium) and not by-pectly by the law of reason, for when all things

were

were in comm̃: it neded not to haue contracts, but after property was brought in, they were right expedient to al people, so þ a man might haue of his neighbour that hee had not of hys owne, & that could not be lawfully but by hys gift, by way of lending, concord, or by lõe leale, bargaine or sale, & such bargains & sale bee called contracts & be made by assent of the parties upon agreement betwene them, of goods or lãds for money or for other recompẽce, but of mony, iuel, for money iuel is no contract. Also a cõcorde is properly upon an agreement betwene the parties in diuers articles there, some rising on the one part & lõe on the other, as if John at Stile letteth a chãber to Hẽry Hart, & it is further agreed betwen thẽ that þ said Henry Hart shall goe to bord in the saied John at S. & the said Henry Hart to pay for the chãber & bording a certein sume &c. this is properly called a cõcord, but it is also a cõtract & a good action lieth upõ it, howbeit it is not much argued in þ lawes of England, what diuersitie is betwene a contract, a cõcord, a promise, a gift, a lone, or a pledg, a bargaine, a couenant, or such other, for þ intẽt of the lawe is to haue the effecte of þ matter argued and not the termes, and a nude cõtract is where a man maketh a bargaine, or a sale of his goodes or landes without any recompence appointed for it. As if I say to another I sell thee al my lande or all my goods and nothinge is aligned that the other shall geue or pay for it, that is a nude contract, and as I take it, it is holde in the lawe and conscience, and a nude

or

or naked promise is where a man promiseth another to geue him certein money at such a day or to buyld him an house, or to do him such certain seruice, & nothing is alligned for the money, for ỹ building, nor for the seruice, these be called naked promises, because there is nothing alligned why they should be made, & I think no action lieth in those cases though they be not performed. Also if I promise to another to kepe him such certaine goodes safely to such a time, & after I refuse to take them, there lieth no action against me for it, but if I take thē & after they be lost or ꝑished through my negligēt keepinge, there an action lieth. D. But what opinion holde they that be learned in the lawe of England in such promises that be called naked or nude pmises, whether doe they hold that they ỹ make ỹ promise be bound in conscience to perfourme their promise, though they cānot be compelled therto by the lawe not? S. The bookes of the lawe of England treat litle thereof, for it is left to the determination of Doctours, & therefore I pray thee shewe me sōewhat now of thy mind therein, & then I shal shewe thee therein somewhat of the minds of diuers that be learned in ỹ lawe of the realme. D. To declare ỹ matter plainely after the saying of Doctours: it would aske a long time, & therfore I wil touch it briefely to geue the occasiō to desire to heare more therof hereafter. First thou shalt vnderstād that there is a promise ỹ is called an aduow, & ỹ is a promise made to god, and he that doth make such a bowe vpon a deliberate minde entendinge to per-

perfourme, it is bound in cõscience to do it though it be onely made in the hart without pronouncing of wordes, and of other promises made to men vpon a certaine cõsideration if the promise be not against ꝑ lawe. As if A. promise to geue B. xx. pound because he hath made him such a house, or hath lent him such a thing, or such other like: I thinke him bound to kepe his promise. But if his promise bee so naked ꝑ there is no maner of consideration why it shoulde bee made, then I thinke him not bound to perfourme it, for it is to suppose ꝑ there was some errour in the making of the promise, but if such a promise bee made to an vniuersity, to a city, to the church, to ꝑ clergy, or to poore men of such a place, & so ꝑ honor of God, or such other cause like, as for maintenance of learning, of ꝑ cõmon welth, of the seruice of god, or in relefe of powerty or such other, then I thinke ꝑ hee is bounden in conscience to perfourme it, though there be no consideration of worldly profit, that the graũtor hath had or intendeth to haue for it, and in all such promises it must be vnderstand that hee that made the promise entended to be boũd by his promise, for els commonly after all Doctours, he is not bound, vnlesse he were bound to it before his promise. As if a man promise to geue his father a gowne that hath neede of it, to kepe him fro cold, & yet thinketh not to geue it him, neuertheles he is bounde to geue it, for hee was bounde thereto before. And after some Doctours a man may be excused of such a promise in conscience by mutability that commeth after the promise if it be

so

so that if he had knowen of the casualty at the
making of the promise he should not haue made
it. And also such promises if they shal bind, that
must bee honest, lawefull, and possible, and els
they are not to bee holden in conscience tho
there be a cause &c. And if the promise be
and with a cause though no worldly profit
grow thereby to him that maketh the promis
but only a spirituall profit, as in the case before
rehearsed of a promise made to an vniuersity, to
a City, to ỳ church, or such other, & with a cause
as to the honor of god, other there are that mai-
cõmonly hold, that an action vpon those promi-
ses lyeth in the lawe Cannon. Sy. whether dost
thou meane in such promise made to an Vni-
uersity, to a City, or to such other as thou hast
rehearsed before, & with a cause as to the honor
of god, or such other, that the party shall be
bounde by his promise, if he entended not to
bounden thereby, ye, or nay? D. I think nay, no
more the vpon promises made vnto cõmon per-
sons. Sy. And then me thinketh thereby that no
action can lie against him vpon such promises for
it is secret in his owne cõscience, whether he
entended ray to be bõd, or nay. And of the intent
inward in ỳ hart mans lawe cãnot iudge, & that
is one of ỳ causes why ỳ lawe of god is necessary
(that is to say) to iudge inward things, & if an
actõ should lie in ỳ case in ỳ lawe Cannon, then
should ỳ lawe Cannõ iudge vpon the inward in-
tent of the hart, which cãnot be as me seemeth.
And therefore it is meete that he learned in the
lawes of the realme, al promises shalbe taken as

this

this maner, that is to say, If hee to whom the promise is made: haue a charge by reason of the promise which he hath also performed: then in that case he shall haue an action for that thinge that was promised, though hee that made the promise haue no worldly pfit by it. As if a man say to an other, heale such a poore man of hys disease, or make an high way, and I shall geeue thee thus much, and if hee doe it, I thinke an action lieth at the cõmon lawe. And moreouer though the thing that he shal do bee al spirituall, yet if he performe it, I thinke an action lieth that the cõmon lawe. As if a man say to an other, fast for me al the next Lent & I shall geeue thee xx. pound, and he performeth it, I thinke an action lieth at the cõmon lawe. And in likewise, if a man say to another, marry my daughter, and I will geeue thee xx. pound. Vpon this promise an action lieth if he marry his daughter, and in this case he cãnot discharge the promise though he thought not to be bound thereby, for it is a good contract, and hee may haue Quid pro quo, that is to say, the preferment of his daughter for his money. But in those promises made to the Vniuersity, or such other, as thou haste remembred before, with such causes as thou haste shewed (that is to say) to the honour of God, or to the encrease of learninge, or such other like, where the party to whom y promise was made is bounde to no newe thinge, by reason of the promise made to him, but as hee was bounde to before, there they thinke that no action lieth agaynst him though hee performe not

his

his promise, for it is no contract, & so his own
conscience must be his iudge whether he entē-
ded to be bound by this promise or not. And if he
entended it not: then he offended for his dissimula-
tion only, but if he entended to be bound, then if
he performe it not: vntruth is in him, & he
ueth himself to be a lier, which is wicked
wel by plain of god, as by ye law of re
thermore many yres learned in ye lawe of Eng-
lād, hold ye a man is as much bounden in cons-
ence by a promise made to a cōmen person if he
entended to be bound by his promise, as he is
the other cases that thou hast remembred of a
promise made to the church, or to the clergy, &
such other, for they say ye offence of vntruth is in
the breaking of the one as of ye other, & they say
that the vntruth is more to be pondred then the
person to whom ye promise be made. M. Now
what hold they if ye promise be made for a thing
past, as I promise the xl. pound for ye thou hast
builded me such a house, lyeth an action then?
M. They suppose nay, but he shall be bound in
conscience to performe it after his intent as is
before said. M. And if a man promise to geue a
other xl. pound in recōpence for such a vertue
he hath done him, lyeth an action there? M. I sup-
pose nay, & the cause is for ye such promises be
not properly contracts, for a contract is proper
where a man for his money shal haue by allow
other parties certaine goodes, or some other pro-
fit as the demand the contract requires, but if
things be granted for a cause ye is past by way
a recompence, then it is rather an accord then
con-

…ourcast, but then the laste is that vpon such re-
…ceyte the thyng that he promised in recompence
…and be payde, or delyuered in hand, for vppon an
…y promyseth his action. D. But in the case
…that I spake of before hold they that he is bounde
…to make recompence, though he entended not to
…be bounden thereby. M. Nay, no more than
…in the other cases that he put before. D. In the
…other cases he was not bounde to that he promi-
…sed but onely by his promise, but in this case of
…treason, he was bounde in conscience before he pro-
…mised to make recompence for the treason, and
…therefore it is meete that he is bounde in consci-
…ence to kepe his promise though he entended
…not to be bounden thereby.

M. Though he were bounde before the promise
…to make recompence for his treason, yet he was
…not bounde to no summe in certaine but by his
…promise, and because that the summe may yet be
…more, or lesse, and not equall to the treason, o
…the party to whom the treason was done
…notwithstanding y promise is at liberty to take
…the value of it pas if he will, therefore they holde
…that he may be his owne iudge in conscience
…whether he ought to be bounde by his promise
…or nor, as he may in other cases, but if it were of
…a debt, then they hold that he is bounden to per-
…forme his promise in conscience. D. So that if in
…the case of treason he affirmeth his promise
…vnto an other. M. Then they holde that he is
…bounde to performe it for fauoure of his other
…though he entended not to be bounden, but if he
…entended to be bounde by his promise, then they

lay that an oth breaketh not, but so ruinous the
premise, for they say he breaketh the law of nature,
which is wrong may doe not bring against the
truth, as well for he breaketh his word is that
he thought in his mynde here to lose himself, by
ought he doth whereby breaketh his othe, though
the offence be not so great by reason of the
iury. Wherefore to that thou saiest there
such promises as ought halle repented
shall lye an action after the law Darnon, I say
as to that in this realme there can be no action
thereon in the spirituall court, if the matter
of a temporalitie be, for a prohibition of
course there should lye in that case. But that
maruaile vth there can no action lye thereon
the kings court, as thou saiest thy selfe, it
maketh no matter, for though there lye no
action in the kings court, against except
a suple contract, yet if they be sued in the
for the debt in the spirituall court, a prohibi
ought to be granted, if a mans
lawe intrude in an action of debt
traction the kings court, yet he shall not
for the periury in the spirituall court, and
remedy lyeth for the periury in the kings
court, for the prohibition lieth not only when
a man is sued in the spirituall courte of such
things, as properly may haue his remedy in the
kings court: but also where the spirituall court
holdeth plee in such case, where they haue
prerogatiue, and by the auncient vsage of the
realme ought neuer to holde. Wherefore
allegement hereon that thou hast set

matter

matter till an other time, and I pray thee now
procede to an other question.

¶ The xx. question of the Student.

¶ The xxvi. Chapter.

A man hath two sonnes, one borne before ef-
pousels, and the other after espousels, and
the father by his will bequeatheth to his sonne
borne all his goods, which of these two sonnes
shall have the goods in conscience. D. As I said
in my full dialogue in latin, the last chapter, the
whole of this case dependeth not in y knowing
what conscience will it prase, but rather in kno-
wing which of the sonnes shalbe iudged heire,
(I mean to say) whether hee shalbe taken for heire
that is borne by the spiritual lawe, or he that is
borne by the lawe of the Realme, or els that it
shalbe iudged for him that the father woke for
heire. S. As to that point, sayest the father de-
sirde not to be knowen, onely that hee wilde
have that hee shoulde bee taken for heire, that
should be iudged for heire by that lawe, that in
this case ought to be iudged by. And then I
pray thee shewe me thy minde therin, for though
the question be not mainly depending upon the
point of the case what conscience will in this case, yet
it is right expedient for the well ordring of consci-
ence to be knowne after what lawe it shalbe iud-
ged, for if it ought to be iudged after the tempo-
rall lawe whan should be heire, this it were against
conscience, if the iudges in y spirituall lawe should

iudge him for heire & an heire by ꝑ spirituall law & I think they should be sold to restitucion thereby, & therefore I pray thee shew me thine opinion, after what lawe it shalbe iudged. D. Me thinketh that in this case it shalbe iudged after the lawe of the Church, for it appeareth the bequest is of goods, and therefore if any thing shalbe taken vpon the execution of the will for the bequest, it must be taken in ꝑ spirituall court and what it is depending in the spirituall court, me thinketh that it must be iudged after the spirituall lawe, for of the temporall lawe they have no knowledge, nor they are not bound to know it, as me thinketh, & more prouger not to iudge after it. But if the bequest had ben of a chattell real as of a lease for terme of yeres, or of a lease for such other, then the matter should haue come in debate in the kings court, and then I think the iudges there should iudge after the lawe of the realme, and that is, ꝑ the party should not be sued and so me thinketh the diuersity of the bounties that make the diuersity of the iudgement. D. Me that might follow a great inconuenience as me semeth, for it might be such a case ꝑ both chattells real, & chattels personal were in the lease then after thyne opinion the one should haue the chattels personal, and the other haue the chattels reall, and it might be conuenient to be taken as mee thinketh, but that the custome will was that the one should haue all, and not to be deuided. Therefore me thinketh that he shalbee iudged for wife that is heire by the cõmon law. And ꝑ the iudges spirituall in this case

rule be bound to take notice what the common
lawe is, for sith the thinges that be in variance
be temporal, that is to say, the goods of the fa-
ther, it is reason that the right of them in this
behalfe shalbe determined by the lawe of the
realme. Howbeit may that be, for the Iudges
spirituall knowe not the lawe of the realme, ne
they cannot knowe it as to the moste part of it
for much part of the lawe is in such speache
that fewe men have knowledge of it and there is
no nearenesse ne familiaritie of study betweene the
that learne the said lawes for they be learned in
severall places and after diuers wayes, and after
diuers maners of teachinges, in diuers specu-
lations and reasonings the one of them hath none
of the bookes of the other, and to bind the spiri-
tuall iudges to geue iudgement after the lawe p
they know not, nat that they cannot come to the
knowledge of it, semeth not reasonable.

Q. They must doe therein as the kinges iudges
must do when any matter commeth before
them that ought to be iudged after the spiritu-
all lawe, whereof I put diuers cases in our first
dialogue in English the xv. chapter, that is to
say they must rather take knowledge of it by
their owne studie, or els they must enquire of
them that be learned in the lawe of the church,
what the lawe is, and in like wise must they do
that it is no doubt that some of them should be
wise to aske any such question in such case as to
confesse that they are bound to geue their iudge-
ment after the temporall lawe, surely they may
lightly offende their consciences. Do not you

I suppose that some be of opinion that they are not bound to knowe the lawe of the Realme, but only to my remembrance I have not heard that iudges of the spiritual lawe are bounden to knowe the lawe of the realme.

And I suppose that they are not bounden to knowe the lawe of the realme, but that in them is to knowe it, when any iudgement of it openeth the right of the matter that dependeth before them, but that they be also bounden to knowe where and in what case they ought to iudge after it, for in such cases they must take the kinges lawe as the lawe lyeth in that point, and are bounden in conscience to followe it as it may appeare by diuers cases whereof one is this. If two iointenauntes be of goodes, and the one of them by his last will bequetheth all his part to a straunger and maketh the other iointenant his executor and dyeth, if he to whom the bequest is made, sue the other iointenant, vppon the legacie as executor &c. vppon this matter shewed the iudges of the spiritual lawe are bounden to iudge the will to be voide, because it is voide by the lawe of the realme, whereby the iointenant hath right to the whole goods by the title of the survivor, and is iudged to haue the goodes as by the first gifte which is before the title of the will, & therfore haue preferment as the eldest title and if the iudges of the spiritual court, iudge otherwise, they are bound to restitucio, & vpon the executours of a man that is attainted at the time of his death may discharge the iudge

in the spirituall court of the pertaining of legacies and they be charged to pay, & yet
[illegible] suit in the spirituall
[illegible] By occasion of that thou hast layed
[illegible] I would aske of thee this question. If a
[illegible] church alien a portion of tithes ac-
[illegible] in the spirituall law hath ordained, is
[illegible] sufficient thought that haue any
[illegible] portion of the temporalties. Sir I am
in doubt therein if the portion be vnder the fourth
part of the value of the Church, but if it be to
the value of the iiij. part of the church or above,
it is not sufficient, and therefore was the statute
of right of tithes ordained, and if in a writ of
right of tithes it be iudged in the kings court
for the patron of the Church, that the
said, because the alienation was not made ac-
cording to the canon in lawe, then the iudges of
the spirituall lawe are bounden to geue their
iudgement according to the iudgement geuen
in the kinges court. And in like wise if a person
of a church agree to take a pension for the terme
of xxti. yeres, if the pension be to the fourthe part of
the value of the church or above, that must be
demaunded after the [illegible] of the kinges
writ, as lands and tenements shall, or els the
person of the Church or his successours may
[illegible] a writ of right of tithes and remain
in the kinges court, and then the iudges of
the spirituall court are bounden to geue iudge-
ment in the spirituall courte accordingly as is
aforesaid. [illegible]
[illegible] a writ of right of tithes

gent by the statute of westminster the ferond
& that speaketh mony of tithes and not of
tion. &. Where a Parson of a Church is
fully deforced of his tithes & is let by an
dicault to aske his tithes in ꝑ spirituall
then this patron may have a writ of
tithes by ꝑ statute then speaketh of
lay none at the common law, for the
their good right though he were let by
dicault to sue for his right. But whē ꝑ
had no remedy at the spirituall lawe, then
suit of ryght of tithes lay for the patron by
common lawe, as well of pentyonis as of
mes, and some say ꝑ in such a case is lay
then of the fourth part by the common
that I passe over. And the reason why
at ꝑ common lawe if the tithes of
above the fourth part &c. was this by
ritual lawe the alienation of the
assent of the Bishop and of the Chapiter
before the lucrelour, without assent of
ter, and so the patron might lese his
rights and hee not assenting thereto,
cumbent might have no remedy but in
ritual court, and there he was barred,
the patron in ꝑ case shall have his remedy
the common lawe where the assent of
nary and Chapiter without the patron
not serue as is aforesaid before. But where
cumbent hath good right by the spirituall
there lay no remedy for the patron by
lawe though the incumbent were let by
dicault, & by ꝑ same Reason ꝑ seuen statutes

gift, &c

and

and it likely as well by the temporall for offringes and penitences as by matters. Then further I would thinke that before the spirituall Court shuld holde plee of a temporall things that they shuld iudge after the temporall lawe, & that iudge that so did ought to forfaite them in that case for by [illegible] they have bene the scholers of [illegible] knowledge of as much as belongeth to their office, as all iudges bothe spirituall and temporall. But if it were in argument in this case whether the clarke shuld not be as expert in the law as a barbard in the temporall law, that shuld be iudged after the spirituall lawe for the matter is spirituall.

D. Yet notwithstanding all the reasons that thou hast made, I cannot see howe the iudges of the spirituall lawe, shall be compelled to take notice of the temporall lawe, seeing that the most part of it is in the frenche tongue, for yet here hath ben made that every spirituall iudge shuld be compelled to learne the tongue. But if the lawe of this realme were set in such order that they might entende to study the lawe Canon might well haue a light of the lawes of this realme, as they haue now of the lawe Ciuil, and that same bookes and treatises were made of cases of conscience concerning these two lawes as there be now concerning the lawe Ciuil and the lawe Cannon, I would affirme [illegible] right well, & then [illegible] the better that they shuld be admitted to [illegible]

[illegible]

The

Me thinketh thine opinion is right good and reasonable, but till such an order be taken they are bound as I suppose to enquire of them that be learned in the comun̄ law what the lawe is & so to geue their iudgement accordinge, if they will kepe themselues frō offence of conscience and for as much as thou hast sayd [illegible] mynde in al these questions before: I pray the now that I may somewhat tele thy mynde in diuers articles that be written in diuers bookes for the ordering of conscience vpon the law canon and ciuill, for me thinketh that there be diuers conclusions put in diuers bookes as in the summes called Summa Angelica, & Summa Rosella, & dyuers other, for the good order of conscience that be against the law of this Realme and rather blinde conscience, then to geue any light vnto it. M.

I pray thee shewe me some of those cases. S. I will with good will.

## Whether an Abbot may with conscience present to an aduowson of a Church that belongeth to the house, without assent of the Conuent.

## The xxvj. Chapter.

It [illegible] in the Chapter [illegible] the parish Church [illegible] in the summes called Angelica in the title [illegible] not [illegible] custome [illegible] spiritual [illegible]

[illegible] iudge

lege to helpe therein. D. Trouth it is that there is such a decretale, but they that be learned in the lawe of Englande hold the decretale bindeth not in this realme, and this is the cause why they doe hold that oppinion. By the lawe of this realme the whole disposition of the lands and goodes of the abbey is the Abbotes onely for his time that he is abbot, and not in the convent, for they be but as dead persons in the lawe, and therefore the abbot shall sue and be sued onely without the convent, doe homage, fealtie, attorne, make leases, and present to advowsons onely in his owne name, & they say farther that this authoritie cannot be taken from him, but by the lawe of the realme, & so they say that the makers of the decretale exceded their power, wherefore they say it is not to be holden in conscience, no more then if a decree were made that a lease for terme of yeres or at will made by the Abbot without the convent should be immediatly voide, and so they thinke that the abbot may in this case present in his owne name without offence of conscience, because the said decretale holdeth not in this Realme. D. But many be of opinion that no man hath authoritie to present aright and conscience to any benefice to cure but the Pope, or that hes hath his authoritye therein derived frō the Pope, for they say that forasmuch as the Pope is the vycar generall under god, and hath the charge of the soules of all people that be in the flocke of christes church it is reason that he cannot minister to all, he doth that is necessary to all the people for their

soules

soules health in his owne person that he shall assigne deputies for his discharge in ꝑ behalfe. And because patrons clayme to present to Churches in this Realme by their owne right without title derived from the Pope, they say that they vsurpe vpon the Popes authority, and therefore they cõclude that though they haue not haue title by the lawe of the realme to present in this case in his owne name, that yet because that title is against the Popes preroga-tiue that ꝑ title, ne yet the lawe of the Realme that maintaineth that title holdeth not in cõsi-stence. And they say also that it belongeth to the lawe cãnon to determyne the right presentment of benefices, for it is a thing spirituall and belo-geth to the spirituall iurisdiction, as the depri-uation from a benefice doth, and so they say the said decretall bindeth in conscience thoughe in the lawe of the Realme it bindeth not. ℣. As to the first consideratyon I wolde right well agree that if the patrones of Churches in this Realme claimed, to put incumbentes into such churches as should fall void of their patrones without presenting them to the Bishop, or if they claimed that the bishop should admit such encumbent as they should present without any examinatiõ to be made of his ability in that be-halfe, that that claime were against reaſõ & re-ligion for the cause that thou hast rehearsed: but for as much as the patrones in this Realme claime no more but to present their encumbents vnto the Bishoppe, and then the Bishop to exa-mine the abilitie of the incumbent, & if he find

him

him by the examinatis not able to have cure of
soule, he then to refuse him, & the patrō to pre-
sent another that shalbe able, & if he be able the
the bishop to admit him, institute him, & induct
him. I think y this claime & their presentments
thereupon stand with good reason and concey-
ued. And as to the seconde consideration it is
holden by the lawes of the realme y the right of
presentment to a Church, is a temporall inhe-
ritance, & shal discende by course of inheritance
from heire to heire as lands & tenements shall,
& shalbe taken as an affets as landes and te-
nements ben, and for the tryall of the ryght of
aduowsons ben ordeined in the law diuers ac-
tions for them y be wronged in that behalfe, as
writs of right of aduowson, assises of darreine
presentment, Quare impedit, and diuerse other
which alwaye lye without time of memorie, as is
declared in the kinges courtes, as thinges perti-
nent to his croune and royal dignitie, and ben-
cause they say that in this case his title ought
to be obayed in haste and conformed, & also
because it comes in barr unto the partie that is
presented be able or not able, by whom shall
the ability be tryed? &c. If the ordinary ben
not party to the action, it shalbe tried by the or-
dinary, and if he be party it shalbe tried by the
metropolitane. Then the law in such case re-
quireth that the partie that is presented shall
die in that point there, & thought is had here,
but in the other point he shall take aduisement in
it till another time, & I stay there. Some lyttel
matter in this point, if any, shall come hereafter
touching him in his presentation, but in this parte

presentation voide in the law, or is the presentation good that notwithstanding?

I think it is not voide therefore, but y naming of them is voide and a thing more then needeth, for if the abbot be disturbed hee must bringe his action in his owne name without the couent.

D. Then I perceiue well that it is not vsed in the law of England, but that the abbot may name the couent in his presentation with him, and also take their assent whom hee shall present if he will, and then I holde it the surer way, that he so do, for in so doinge hee shall not offend neyther in law, nor conscience.

S. To take the assent of the couent whom he shall present, and to name them also in y presentation knowing that hee may not otherwise, both in law, and conscience if he will, is no offence. But if he take their assent, or name them with him in the presentation, thinking that he is so bound both in law, and conscience, leuinge a conscience where none is, and regardeth not the lawes of Realme, that will discharge his conscience, this will not serue if he will so that he present in such manner as he ought, which may not without their assent, therefore the error and offence of conscience is the abbot's. For as like wise if the abbot present without their assent, and therefore the couent either for any offendeth conscience, in that he neglecteth the obseruance of the church, for that they were not asked their assent, then they offend in not goinge and he offendeth that offendeth not. And therefore the surer way is in this case to vse both the said lawes or such effect as they bee

and

and not to set an offence of conscience by breaking of the said decree, which liuerth not in effect in this behalfe within this realme.

If a man finde beastes in his grounde doing hurt, whether may he by his owne authority take them and keepe them til he be satisfied for the hurt.

## The xxvij. Chapt.

This Question is made in the Summe called Summa Rosella, in the title of restitution (that is to say) restitutio rei. the ix. article, and there is answered that he may not take them for, holde them as a pledge til hee be satisfied for, hurt: but that hee may take them and keepe them til he knowe who owneth the, that he may duely learne against whom to take his remedy, is not the law of the realme to in like wise, Verely, for by the lawe of the realme, in that case hath the hurt, may take the, as a distresse, and put them in a vounde, so it be within the same shire, and there them remaine till the owner will make him for the hurt.

What calleth thou a vounde ouerte. A vounde is not only such a vounde as is commonly in townes, and fordoings, for to put in beastes that be distrained, but it is any ouerte where they may bee in lawfully, not making the owner an offendour for their beeing there, and that it bee there also, that the

owner

owner may lawfully geue the beastes meate, & drinke while they be in pounde.

D. And if they die in pounde for lacke of meate whose ieopardy is it? M. If it be such a pounde ouert as I speake of, it is at the perill of him that oweth the beastes, so that he that hath his hurt shalbe at liberty to take his action for the trespalle if hee will, and if he bee not a lawfull pounde, then it is at the perill of him that distrained, and so it is if he drive them out of the shire, and they dye there.

1 Iug. 27: 6

D. I put case that he that oweth ꝑ beastes, offer sufficient amendes, & the other will not take it, but keepeth the beastes still in pounde, may the owner take the out? M. No, for he may haue his owne iudge. And if hee doe, he shall lose against him for breaking of the pounde, he must sue a replevin to haue his beastes redelivered him out of the pounde, & thereupon it shall be tried by xii. men whether the amendes that was offered were sufficient or not, and if it be found that they were not sufficient, & that they haue duely executed their office, then shall they haue iudgement. D. If it be found by the iury, men that ꝑ amendes were sufficient, shall he that refuseth to take it, haue no iudgement in his replevin, for keeping of ꝑ beastes in pounde after that time. M. I think no, but that he shall haue damages in the replevin, because the matter is tryed against him.

3 Er: 332: acc:
Ow: 42: acc:

D. I put case that the beastes after that time be in pounde for lacke of meate, whose ieopardy is it then? M. Of the ieopardy of him

that

ued ꝑ beaſts, as it was before, for he is bounde at his peril by reaſon of ꝯ wrong that was dōe at the beginning, to ſee ꝯ they haue meate as lōg as they ſhalbe in poſſe, vnles ꝯ kings writ come to deliuer them, & he reſiſteth it, for after ꝯ time it ſhal be at his ieopardy if they dye for lacke of meate, & the damages ſhalbe recouered in an action brought vpon the ſtatute for diſobeying the kinges writ.

## ¶ whether a gift made by one vnder the age of xxb. yeares be good.

## The xxbiij. Chapter.

IT appeareth in Summa Angelica in the title donatio prima the bij. article, that a man before the age of xxb. yeare may not geue, without it bee with the authority of his tutor. Is it not ſo likewiſe at the common lawe? ℟. The age of infants to geue, or ſell their lands and goods in the lawe of England at, is xxj. yere, or aboue, ſo that after that age the gift is good, & before ꝯ age it is not good, by whoſe aſſent ſo euer it be except it be for his meate, & his drink, or apparel, or that he do it as executour, in performance of the will of his teſtatour, or in ſome other like caſes that needeth not to be rehearſed here, and that age muſt be obſerued in this realme in lawe and conſcience, and not the ſaid age of xxb. yere. ℣. If put caſe it were ordeyned by a decree of ꝯ Church, that if any man by his will bequetheth goods to an other, and willeth ꝯ they ſhalbe de-

liuered to him at his full age, & that in that case xxb. yere shalbe taken for the ful age, shal not ꝑ decree be obserued & stande good after the lawe England? S. I suppose it shal not, for though it belong to the church to haue ꝑ probate & the executions of testamentes made of goodes and chattels, except it be in certaine Lordships and seignories that haue them by prescription, yet ꝑ church may not as it seemeth determine what shalbe the lawfull age for any ꝑson to haue the goods, for that belongeth to the king & his lawes to determine, & therefore if it were ordeined by a stat of ꝑ realme, ꝑ hee should not in such a case haue the goods til he were of ꝑ age of xxb. yeare, that statute were good & to bee obserued aswell in the spiritual law as in the law of the realm, and if a statut were good in that case, then a decree made thereof is not to be obserued, for thordring of the age may not be vnder two seuerall powers, and one property of euery good law of man is, that ꝑ maker exceede not his authority, and I thinke that the spiritual Iudges in that case ought to iudge the ful age after the law of the realme, seing that the matter of the age concerneth temporall goods, and I suppose farther that as the king by authority of his parlimit may ordaine that all willes shalbe voide, & that the goods of euery man shalbe disposed in such maner as by statute should be alligned, ꝑ more stronger he may appoint at what age such wils as he made shalbe performed. D. Thinkest thou then ꝑ the king may take away the power of ꝑ ordinary, that he shal not call executours to ac-

compt.

compt. S. I am somewhat in doubt therein, but it semeth that if it might be enacted by statute, that al wils should be void, as is aforesaid that then it might be enacted that no mā should haue authority to call none to accōpt vpō such wils, but such as ꝑ statute shal therein apoint, for he ꝑ may do the more, may doe the lesse, notwithstanding I will nothing speake determinately in ꝑ pointe at this time, ne I meane not that it were good to make a statute that al wils should be voide, for I thinke them right expedient, but mine intent is, to proue that the cōmon law may ordaine ꝑ time of the full age as well in wils of temporall thinges as otherwise, and also ꝑ wils shalbe made. And if it may so do, thē much stronger it belongeth to the kings lawes to interpretate wils cōcerning tēporall things, aswell when they come in argument before his iudges, as when they come in argument before spiritual iudges, and that they ought not to be iudged by seuerall lawes (that is to say) by the spirituall iudges in one maner, and by ꝑ kings iudges, in an other maner.

## ¶ If a man be conuict of hereſy before the ordinary, whether his goods be forfeited.

## ¶ The xxix. Chapt.

IT appeareth in *Summa Angelica* in the title Dominio prima the xiij. article, that hee that is an heretike may not make executours, for in the

law his goods be forfait, what is the law of the realme therein. ℣. If a man be cõuict of heresies and abiure, he hath forfait no goods, but if he be cõuict of heresie, & be deliuered to lay mans hands, then hath he forfeit al his goods that he hath at that time ỹ hee is deliuered to them, though hee be not put in executiõ for ỹ herely, but his lãd he shal not forfeit except he be dead for ỹ herely, & then he shal forfeit thẽ to the lordes of the fee, as in case of felony, except they be holden of the ordinary, for then the king shal haue the forfaiture, as it appeareth by a statute made ỹ second yere of king Henry the fift the vii. chapter. ℣. Hee thinketh that as it belongeth onely to the church to determine heresies, that so it belongeth to ỹ church to determine what punishmẽt he shal haue for his heresie, except deth, which they may not be iudges in, but if the church decree he shal therefore forfeit his goods, mee thinketh that they be forfeit by that decree. ℣. May herely, for they bee temporall, and belong to the iudgement of the kings court, and I thinke the ordinary might haue set no fine vppon one empeched of heresie, til it was ordeined by ỹ statute of Henry the iiii. ỹ he may set a fine in that case if hee see cause, and then the king shal haue that fine, as in the said statute appeareth.

Where diuers patrons of an aduowson, and the church voydeth, the patrons vary in their presentments, whether ỹ Bishop shall haue liberty to present which of the incumbents that hee will, or not.

¶ This

¶ The xxx Chapiter.

This question is asked in Summa Rosella. in the title Patron' the ix. article, & there it appeareth by the better opinion that he may p̄sent whether clarke he will, howbeit the maker of the said summe saith by the vigour of ꝑ lawe the Bishop in such case may p̄sente a straūger because the patrons agree not, and in the same chapiter Patronus the xb. article.

It is said, ꝑ he must be p̄ferred that hath the most merites & hath the most part of ꝑ patrōs, And if the number be equall, that then it is to consider the merites of the patrons, and if they be al like merite, then may the Bishoppe commaund them to agree & to p̄sente againe. And if they cannot yet agree, then the liberty to p̄sente is geuen to the Bishoppe to take which he will, & if he may not yet p̄sente without great trouble, then shal the Bishop ordre the Church in the best maner he can, & if he cannot ordre it, then shal he suspend the church & take away ꝑ rites to the rebukes of the patrōs, and if they will not so be ordered then must hee aske helpe of the temporalitie, and in the xb. article of the said title patronus. It is asked whether it be expedient in such cases ꝑ the more part of ꝑ patrons agree having respect to al ꝑ patrons, or ꝑ it suffice to have the more part in comparison of ꝑ lesse part as thus: There be iiij. patrōs to-gether one clarke the third p̄senteth another, & ꝑ fourth another, he ꝑ is p̄sented by ij. hath not more part in cōparis of al patrons for they be egal, but he hath ꝑ more part hauinge respect

to the other presentmēts, to this question it is aūswered that either the presentmēt is made of thē that be of ỹ colledge, & there is requisite the more pt hauīg respect to al the colledge, or els euery mā presenteth for himselfe as comonly do lay mē ỹ haue the patronage of their patrimony & thē it sufficeth to haue ỹ more pt in respect of the other pties, doth not the law of Englād agree to these diuersities? S. No verily. D. what order thē shalbe take in the law of Englād if the patrōs vary in their presentments. S. After ỹ lawes of Englād this order shalbe take, if they be tointenāts, or tenāts in cōmon of the patronage, & they vary in presentmēt, the ordinary is not bounden to admit none of their clerkes neither the more part not the lesse, & if the bi. monethes pas or they agree, thē he may sūt by the lapse, but he may not present within the bi. monethes, for if hee do they may agree & bringe Quare imp against him, & remoue his clerke, & so the ordinary shalbe as disturbour, & if the patrōs haue the patronage by discēt as coparceners thē is the ordinary bound to admit the clerke of the eldest sister, for the eldest shal haue the prīmēt in the law & if she wil, & thē at the next vacatiōn the next sister shal presēt & so by turne, one sister after another, til al the sisters or their heires haue presented, & thē the eldest sister shal begin againe, & this is called a plēting by turne & it holdeth alway betwene coparceners of an aduowson, except they agree to present together or that they agree by cōpositiō to present in the of her maner, & if they do so ỹ agreemt must stād,

but this must bee alway except, ꝑ if at the first auoydāce ꝑ shalbe after the death of the commō auncestor, the king haue the ward of the pōgest daughter, ꝑ then the kynge by his prerogatiue shal haue the presentmēt. And at the next auoidance the eldest sister & so by turne. But it is to vnderstād ꝑ if after the death of ꝑ cōmon auncestor ꝑ church voideth, & the eldest sister presētid together wᵗ an other of ꝑ sisters, & ꝑ other sisters euery one in their owne name or together, ꝑ in that case ꝑ ordinary is not bound to receaue none of their clerkes but may suffer the church to rū into ꝑ laps, as it is said before, for he shal not be bound to receiue ꝑ clerke of the eldest sister, but where she presenteth in her owne nāe. And in this case where the patrōs vary in presentmēt, the church is not properly said litigious so ꝑ the ordinary should be bound at hys perill to directe a writ to enquire (de iure patronatus) for that writ lieth where two present by seuerall titles, but these patrōs prēt all in one title, & therfore ꝑ ordinary may suffer it to pas if he wil into ꝑ laps, & theis maner of presentmēts must be obserued in this realme in lawe & conscience.

¶ How long time the patrō shal haue to present to a benefice.

¶ The xxxj. Chapiter.

This question is asked in Sūma angelica in the title Jus patronatus the xbj. article, and there it is aunswered, that if the patrō be a lay man that he shal haue iiij. monethes, & if he bee a clerke, he shall haue vj. monethes.

S. And by the common lawe he shal haue sixe monethes whether he be a lay man or a clarke, and I see no reason why a clarke shoulde haue more respit then a lay man, but rather y contrary. D. Frō what time shal y vj. monethes be accompted? S. That is in diuers maners after the maner of y voidance, for if the church voyd by death, creation, or cession: the sixe monethes shalbe compted from the death of the incūbent, or from the creation, or cession, wherein the patrō shalbe compelled to take notice at his perril, & if the voidance be by resignation or deprination, then the sixe monethes shall beginne when the patron hath knowledge geuen him by the Bishop of the resignation or deprinatiō. D. What if he haue knowledge of the resignation or deprination and not by the Bishop, but by some other, shal not the sixe monethes begin then from the time of that knowledge? S. I suppose that it shal not begin til he haue knowledge geuen him by the Bishoppe. D. An vnion is also a cause of voydance howe shall the vj. monethes be reckoned there? S. There can no vnion be made but the patrons must haue knowledge, and it must be appointed who shall present after that vniō, that is to say, one of them or both, either iointly or by turne one after another as the agreement is vppon the vnion, & sith the patron is priuy to the voydance and is not ignorant of it, the sixe monethes shalbe accompted from the agreement. D. I see well by the reasō that thou hast made in this chapitter, that ignorance sometimes preuayleth in the lawe of Englande

land, for in some of the said mandaunces it shall recule the patrons as it appeareth by the reasons above, and in some it shall not, wherefore I pray that I be due me counsel what where ignorance resteth in the law of England, where not after thine opinion. S. I will teach good sol hereafter but thou failest of thy pat me to remembrance thereof. Wat I would fain more than see what further in such matters as I have moved thee before concerning the variance betwene the laws of England & other lawes, in there be many more cases thereof that we ne-ed have right great need for the good order of mainteyne of many sons to be reformed & to be brought into one opinion both among spiritual & temporal, as it is in the case where dettors hold plees that the statut of Jewry that restraine parties to gene lands to the church should be void, & they say further that if it were pro-fited the statut that no gift should be made to feoffees to put a gift made to the church should be good, & they say the reflection may not take away the authority of the supposition, & thus saying they openly against the statutes wherby it is prohibite that lands should not be geuen into mortmaine, & they say also that bequestes and gifts to the church must be determined after the laws Canon, and not after the laws & statutes of laye men, and so they regarde much to whō the gifte is made whether to the church or to make causwais, or to comon pastor: & beare more favour in gifts to the church than to other, and the laws of the realme beholdeth the things that is

geuen

geuen & pretended ỳ if the thinge ỳ is geuen be of landes or goodes ỳ the determination therof of right belongeth in this realme to ỳ kinges lawes whether it be to spirituall mẽ or tẽporal, to the church or to other, & so is great diuision in this behalfe whẽ one pferreth his opiniõ, & another his, & one this iurisdictiõ, & another that, & that as it is to feare more of singularitye thẽ al charity: wherefore it semeth ỳ they ỳ haue ỳ greatest charge ouer the people specially to ỳ health of their soules, are most bound in cõscience before other to loke to this matt, & to doe that in thẽ is in al charity to haue it reformed not beholding the tẽporal iurisdictiõ nor spirituall iurisdiction but the cõmõ wealth & quietnes of the people: that vndoubtedly would thorly follow if this diuisiõ were put away, which I suppose verily will not be but that al mẽ wiñ ỳ realme both spirituall & temporall bee ordered & ruled by one lawe as to tẽporal things: notwithstanding for as much as the purpose of this writinge is not to treat of this matt, therefore I will no further speake thereof at this time. M. Then I pray thee procede to another questiõ as thou saiest thy minde is to doe. S. I wil in good wil.

¶ If a man be excommenged whether he may in any case be assoyled without making satisfaction.

¶ The xxxij. Chapiter.

IN the summe called Summa Rosella, in the title Absolutio quarta, the second article it is

said

sayd that he that is excōmunicate for a wrōg if he be able to make satisfaction ought not to be assoyled but he doe satisfie, & that they offend yᵗ do assoyle him, but yet neuertheles he is assoyled, & if he be not able to make amendes that he must yet be assoyled, taking a sufficient gage to satisfie if he be able hereafter, or els that he make an other to satisfie if he be able. And these sayings in many thinges hold not in the lawes of England. M. I pray thee shew me wherein the lawe of the Realme varieth therefrō. S. If a mā be excommunicate in the spirituall court for debt, trespas, or such other things as belong to the kings crowne, & to his royal dignitie, there he ought to be assoyled without makinge any satisfactiō, for the spiritual court exceedeth their power in that they held plee in those cases and the party if he will may thereupon haue a Prohibicion facias, aswel against the partye that sued him, as against the iudge, & therfore in this case they ought in cōscience to make absolution without any satisfaction, for they not onely offended the party in calling him to aūswere before thē of such things as belong to yᵗ lawe of yᵗ realme, but also yᵗ kinge, for he by reason of such suites may leese great aduantages by the reasō of the writs originals, iudicials, fines, amerciaments & such other thinges as might growe to him yᵗ suits had bē takē in his courts according to his lawes, & according to his saying it appeareth in diuers statutes yᵗ if a mā lay violēt hāds vpon a clerke & beat him, that for the beating amendes shal be made in the kings court, & for the laying

of

of violent hands vpon the clarke amendes shall
be made in the court christian. And therefore if
y Iudge in the court christe would award the
party to yeld damages for the beating, he did a-
gainst the statute, but admit that a man bee ex-
communēged for a thinge that the spiritual court
may awarde the party to make satisfaction of,
as for the not inclosing of the churchyard, or for
not apparellinge of the Church conuenientlye:
Thē I thinke the party must make restitution
or lay a sufficient caution if he be able or he be al-
loyled, but if the party offer sufficient amends
& haue his absolution, and the iudge will not
make him his letters of absolution, if the ex-
communegement bee of recorde in the Kinges
court then the Kinge may writ vnto the spi-
ritual Iudge, commaunding him that he make
the party his letters of absolution vppon paine
of a contempt, & if the said excommunication is
not of record in the kings court, then the party
may in such case haue his actiō against y iudge
spiritual for that he would not make him his
letters of absolution, but if he be not allotted or
if he be not able to make satisfaction, & therfor
the iudge spiritual will not allotte him, what y
kinges lawes may doe in that case I am some-
what in doubt, and will not much speake of it
at this time, but as I suppose he may as well
haue his action in that case for the not allotting
him, as where he is allotted, & y the iudge will
not make him his letters of absolution: and I
suppose the same lawe to be where a man is ex-
cursed for a thing that the iudge had no power

to

to accurse him in, as for debt, trespass, or such o-ther. D. There he may haue other remedies, as a Premunire facias, or such other, & therfore I suppose the other action lyeth not for him. M. The Judge & the party may be dead, and then no Premunire lieth, and though they were a live & were condempned in Premunire, yet that should not auoide y excommengement, & therefore I thinke the action lieth specially, if he be thereby delaied of actions y he might haue in y kings courte, if the said excommengement had not bene.

## ¶ whether a Prelate may refuse a legacie.

## ¶ The xxxiij. Chapt.

IT is moued in the said summe, named Rosella, in the title Alienatio xx. the xj. article, whether a prelate may refuse a legacy, wherin diuers opinions be recited there, which as me thinketh haue nede after the lawes of the realme to bee more plainely declared. D. I pray thee shew me what the lawe of the realme will therein. M. I thinke that euery prelate and soueraigne that may onely sue, & be sued in his owne name as Abbottes, Priours, and such other, may refuse any legacy that is made to the house, for the legacy is not perfit till her to whom it is made assent to take it, for els if he might not refuse it, he might be compelled to haue landes whereby he might in some case haue great losse, but

but thē if he intende to refuse, he must as soone as his title by the legacy falleth, relinquishe to take the profits of ꝑ thing bequethed, for if one take the profits thereof, he shal not after refuse the legacy: but yet his successor may if hee will refuse the taking of ꝑ profits to saue the house frō yelding damages, or frō arrerages of rents if any such bee, & like lawe is of a remainder, as is in legacy, for though in ꝑ case of a remainder & also of a deuise as most men say, that freholde is cast vpō him by the lawe when the remainder or deuise falleth: yet it is in his liberty to refuse the taking of the profits, & to refuse ꝑ remainder, if he wil as he might do of a gift of lāds, or good, for if a gift be made to a man ꝑ refuseth to take it, the gift is voide, & if it be made to a man ꝑ is absent, ꝑ gift taketh not effect in him til he assent: no more then if a man disseise one to an other mans vse, hee to whose vse the disseison is made, hath nothing in that land, ne is no disseisour til he agree. And to such disseisons & gifts, an Abbot or Priour may disagree as wel as any other man, but after some men a Bishop, of a deuise, or remainder that is made to the Bishop, and to the Deane and Chapter, nor a Deane and a Chapter of a deuise, or remaynder made to them, ne yet the master of a colledge of such a deuise, or remaynder made to him and to hys brethren, may not disagree without the Chapter or brethren, for the Bishoppe of such lands as hee hath with the Deane and Chapter, ne the Deane, nor Master of such lande as they haue wyth the Chapiter, or Brethren may

not

not answere wout the chapter & brethren, and therefore some say ꝑ if the deane, or maister will refuse, or disclaime in the lãdes, that they haue by ꝑ deuise or remainder, that disclaimor wout the chapter or brethren is voide. And therefore it is holden in the law, ꝑ if a Bishop be vouched to warranty, and ꝑ tenant bindeth him to the warranty by reason of a lease made to him by ꝑ Bishop, and by the deane and the Chapter, yelding a rent, ꝑ in that case ꝑ bishop may not disclaime in the reuersion without the assent of ꝑ deane and chapter. But yet if a reuersion were graũted to a deane, & a chapter, & the deane refuse, the graunt is voide, & so it appeareth that a Deane may refuse to take a gifte, or graunt of landes, or goods, or of a reuersion made to him, and to the chapter, and yet he may not disagree as remainder, or deuise, and the diuersity is because the remainder & deuise be cast vppon him without any assẽt, whereunto neither the deane nor ꝑ chapter by thẽselues, may in no wise disagree wout the assẽt of the other, but a gift or graunt is not good to them wout they both assent, and in such gifts as I suppose an infaunt may disagree as wel as one of full age, but if a woman couert disagree to a gift, & the husband agree, that gift is good. D. what if the landes in that case, of a mã & his wife be charged with damages, or bee charged with more rent then the land is worth, and the husband die, shal the wife be charged to the damages, or to the rent? D. I thinke nay, if the wife refuse the occupation of the grounde after her husbandes death,

and

& I thinke the same law to be if a lease bee made to the husband & the wife yeelding a great rent then the land is worth, that ꝑ wife after ꝑ husbandes death may refuse the lease to saue her frō the payment of the rent, & so may the successor of an Abbot. Q. and if the husband in ꝑ case question the wife, & then make his executours & die, whether may his executors in the wife refuse ꝑ lease. Q. If they haue goods sufficient of their testator to pay the rent, I thinke they may not refuse it, but if they haue not good sufficient of their testatour to pay the rent to the end of the terme, I thinke if they relinquish the occupation, they may by speciall pleadinge discharge themselues of the rent and the lease, and if they do not, thei may lightly charg thēselues of their owne goods. And if a lease bee made for terme of life, the remainder to an Abbot for terme of life of Iohn at Stile, reseruing a greater rent ꝑ the lande is worth, and after the tenants for terme of life dieth, the Abbot may refuse the remainder for the cause before rehearsed, & in case that the Abbot assent to the remainder whereby he is charged to the rent during the time ꝑ he is Abbot, & after hee dieth &c. is deposed during the said Iohn at Stile, in ꝑ case his successour may discharge himselfe by refusing the occupation of the land, as is aforesaide. But I thinke that if such a remainder were made to a Deane, and to the chapter, & the Deane agree without the assent of the Chapter, that in that case the deane and the Chapter may afterward dissent to the remainder, and that the acte of the deane

with

2 Ro: R: 120: 60. Wms: 215: acc: 298: 103: Salm: 1 vol: Lamb. 241: 1 Syd: 266 Sty. 53: 114: Cou: 2 Cr: 549: 21: H. 6: 24: 6. 132: Mild. 49: acc:

out ꝑ assent of the Chapter shal not charge the chapter in ꝑ behalfe, & thus it appereth though the meaning of the said chapter & article in the said sume be, ꝑ a prelate may not disagree vnto a legacy, for hurting of ꝑ house, yet hee may at the lawes of the realme disagree thereto, where it should hurt his house. And if in a Precipe quod reddat, there be but one tenant, he be spiritual or temporal, & he refuse by way of disclaimer in such case, where he may disclaime by ꝑ law, there the land shal vest in ꝑ demaundāt, & if there be .ij. tenants the it shal vest in his felow, if he wil take the whole tenacy vpō him, or els it shal vest in the demaundāt. But if an Abbot or a lay mā refuse ꝑ taking of ꝑ profits, & shew a special cause why it should hurt him if hee did assent, and hee thereby discharged as is said before: In whō ꝑ land shall vest it is more doubt, whereof I will no farther speake at this time. And thus it appeareth by diuers of the cases that be put in this chapter that he ꝑ is ignorant in the law of ꝑ realme, shal lacke ꝑ true iudgement of cōscience in many cases. For in many of these cases that may be don therein by the law, must also be obserued in conscience, &c.

## ¶ whether a gift made vnder a condition bee bonde if the soueraigne only breake the condition.

### The xxxiiij. Chapter.

In Summa Rosella in the title Alienatio, the xij. article, is asked this question, whyther a gyfte

gift made vnder a certayne fourme may be auoyded or reuoked, because the Prelate or lonetaigne onely did breake the fourme, and it is there answered that it may not, for that the deede of the Prelate only ought not to hurt the church, & if those wordes vnder a maner be vnderstande of a gifte vppon condityon as they seeme to be, then the said solution holdeth not in this realme neither in lawe nor conscience.

D. What is then the law of Englande if a man enfeoffe an Abbot by deede indented vppon condition, that if the Abbot pay not to the feoffor certeine summe of money at such a day, that it shalbe lawfull to the feoffor to reenter, and at that day the Abbot faileth of his payment, may the feoffoure lawefully reentre and put out the Abbot.

S. Yea verely, for hee had no right to the lande but by the gifte of the feffour, and his gift was conditionel, and therfore if the condition be broken, it is lawefull by the lawe of England for the feffour to reentre, & to take his lande again & to hold it as in his first estate, by which reentre after the lawes of the realme, he dispowseth the first liuery of seison, & al the meane acts don betweene the first feoffement and the reentre, and it forceth litle in the lawe, in whom the default be that the condition was not performed, whether in the Abbot or in his couent, or in both or in any other person whatsoeuer he be, except it bee in the feoffour himselfe. And it is great diuersity betweene a cleare gift made to an Abbot without condityon, and where it is made

with

with condition, for whē it is made without cō-
dition the act of the Abbot only shal not by the
common lawe disherite the house, but it bee in
very fewe cases, but yet vppon diuers statutes
the sufferaunce of the abbot only may disherite
the house, as by his ceasser, or by leauynge of a
crosse vppon a house against the statute thereof
made, in which case the house thereby shal leese
the land, & some say that by the cōmon lawe vp-
on his disclaimour in auowry, a writ of righte
of disclaimour lieth, but if the gift be vpon cō-
dition, it stādeth neither w lawe nor cōscience, y
the Abbot should haue any more perfit or sure
estate then was geuen vnto him, and therefore
if the said estate was made to the house vppon
condition, so that estate may be auoided for not
performing of the condition, and I think be-
ing that this I haue said is to be holde in this
Realme, both in the lawe and conscience, & that
the decrees of the church to the contrary, bynde
not in this case. But if the lands be geuen to an
Abbot, and to his couent, to the intent to finde
a Lampe, or to geue certaine almes to poore men
though the intent bee not in those cases fulfil-
led, yet the feoffour, nor his heires may not
reenter, for hee reserued no reentre by expresse
wordes, ne in the wordes, when he sayth, to the
intent to finde a Lampe, or to geeue almes, &c.
is implyed no reentre, ne the feoffour, nor his
heires shall haue no remedy in such cases, vn-
lesse it bee within the case of the statute de
Westminster the second that geueth the Cessauit
& Cancaria,

¶ whether a couenant made vpon a gift to the Church, that it shal not be alienated (be good.

## ¶ The xxxvi. Chapter.

In the saide summe, called Summa Rosella, the saide title Alienation, the xiij. article is alsoe this question, whether a couenant made vpon a gift to the church, that it shal not be alienated be good. And the same questiō is moued againe in the said Summa called rosella, in ỹ title eodem the first article, & in Summa Angelica, in the title Donacio prima, the ij. and iij. articles, and the intent of the questiō there is whether notwithstādyng the condition be good to some alienations, whether ỹ yet it be good to restraine alienations by the redeptiō of thē that be in captiuity vnder infidels, or for the greater aduātage to ỹ house, and though the better opinion be there, that the condition may not be broken for redemption of them that bee in captiuity: yet it is in manner a whole opiniō that it may be sold for the greater aduauntage to the house, for it is said there that it may not bee taken, but that the intent of the geuer was so, & therefore they cal the condition that prohibiteth it to bee solde (condicio turpis) that is to say, a vile cōdition, wherfore they regard it not: but verely as I take it, if a condition may restraine any maner of alienation, then it shal aswel restraine alienations for the said causes before reherſed, as for any other cause, & though me thinketh ỹ that cōditiō is good, &

after

ther the lawes of the realme, that vppon giftes to the Church restraineth alienations, yet I shal touche one reason that is made to the contrary, that is this, There is a cleare grounde in the lawe, that if a feoffement be made to a common person in fee vpon condition that the feoffee shal not alien to no man, that condition is void, because it is contrary to the estate of a fee simple to bind him that hath ỹ estate ỹ he shoulde not alien if hee list, & some say that an Abbot that hath lande to hym and to his successours hath as high and as perfit a fee simple as hath any man that hath land to him and to his heirs, and therefore they say that it is as well against the lawe of the Realme to prohibite that the Abbot shall not alien, as it is to prohybite a man thereof, and though it be therein true as they say as to the highnes of the estate, yet me thinketh there is great diuersity betweene ỹ two concerning their alienatiõs, for whẽ lands is geuen in fee simple to a common person: the intent of the lawe is that the feoffee shall haue power to alien, & if he do alien, it is not against the intent of the lawe, ne yet against the intent of the feoffour, but whẽ landes be geuen to an Abbot and to his successours, the intent of the lawe is, and also of the geuer (as it is to presume) that it shoulde remayne in the house for euer, and therefore it is called Mortmain, that is to say, a dead hand as who saith that it shall abide there alway as a thing dead to the house. And therefore as I suppose the lawe will suffer that condition to be good ỹ is made to restrayne

that such mortmaine should not be alienedꝫ that yet it may prohibite the same condition to be made vppon a feoffement made in fee simple to a mā & to his heirs for that is the most high, the most free, & the most pureste state y is in the law. But the lawe suffereth such a condityon to be made vpon a gift in tayle because the statute prohibiteth that no alienation shoulde be made therof. And thē as the law suffereth such a condition vpon a gift in mortmaine, that is to say, that it shal not be aliened, to bee good: then it iudgeth the condityon also accordinge to the wordes, that is to say, if the condition be general that they shal alien to no man as this case is that it shal be taken generally according to y wordes, and it shal not be taken that the intent of the geuer was other wise then he expresse in his gyft, thoughe percase if he were alyue himselfe and the questiō were asked him whether he would be contented it should be aliened for the said two causes or not, he would say y, but when he is dead no man hath authoritye to interprete his gift otherwise then the lawe suffereth, nor otherwise then the wordes of the gift be. And if the condyption be special, that is to say, that the land shall not be aliened to such a man or such a mā, then the condition shall be taken according to the wordes, & then they may be aliened as for that cōdition to any other but to them to whō it is expressely prohibited that the land should not be aliened to.

And if the landes in that case be aliened to one that is not except in the condition, then he may

alien

alien the land to him that is first excepted wout breaking of the condition, for conditions be taken straitely in the law and without equity. And thus me thinketh that because the said cōditiō is general & restraineth al alienatiōs, that it may not be alienes neither by the law of the realme, ne yet by conscience, no more for the said two causes, then it may for any other cause, & this case must of necessitye bee iudged after the rules & grounds of the law of the realme, & after no other law as me seemeth.

¶ If the patron present not within vj. monethes, who shal present.

¶ The xxxvj. Chapiter.

IN the said summe called Summa Rosella, in the tytle Beneficium in principio it is asked, if the patron present not within fyre monethes who shall present, and wythin what tyme the presentment must be made. And it is aunswered there that if the patron present not within vj. monethes, that the Chaptter shall haue fyre monethes to present, and if the chapiter present not within vj. monethes, that then the Bishop shal haue other vj. monethes. And if he be negligent, then the Metropolitane shal haue other vj. monethes, and if he present not, then the presentment is devolute to the Patriarke. And if the Metropolitane haue no superior under the Pope, then the presentment is devolute to the

Pope. And so as it is said there ꝑ Archebishop shal supply the negligence of the bysshoppe if he be not exempt, and if he be exempt the presentment immediatly shal fal from the Bishop to ꝑ Pope. And as I suppose these diuersities hold not in the lawes of the realme.

D. Then I pray thee shew me who shall present by the lawes of the realme if the patron do not present within his sixe monethes?

S. Then for default of the patron ꝑ Bysshoppe shall present vnlesse the king be patron, and ꝑ the Bishop present not within sixe monethes then the Metropolitane shal present, whether the Bishop be exempt or not. And if the Metropolitane presēt not within the time limited by the law, then there be diuers opinions who shal present, for some say ꝑ the Pope shall present, as it is said before, and some say the king shal pesent.

D. What reasō make they ꝑ say ꝑ king should present in ꝑ case? S. This is their reason they say ꝑ the king is patron paramount of al ꝑ benefices within ꝑ realme. And they say further ꝑ the kinge and hys progenytours kinges of England without time of mynd haue had authorite to determine ꝑ right of patronages in this realme in their owne courts, & are bound to see their subiects haue ryght in that behalf within the realme, & ꝑ in that case from him is eth no appeale. And then they say ꝑ if ꝑ Pope in this case should present, that then the king should not onely leese his patronage paramount, but also that he should not soe time be able to

do

be right to his subiects.

D. In what case were that? S. It is in this case. the lawe of the realme is, that if a benefice fall voide that the patron shall present within vj. monethes: and if he doe not that then the ordinary shal present, but yet the lawe is farther in that case, that if the patron preset before the ordinary put in his Clerke: that then the patron of right shal enioy his presentment, and so it is thoughe the tyme shoulde fall after to the Metropolitane or to the Pope, and if the presentment should fal to the Pope, then thoughe the avoydaunce abode still voide, to that the patron myght of right present; yet the patron should not knowe to whome he should preset, excepte he shoulde goe to the Pope, and to he should faile of right within the realme. And if peradue he went to the Pope and presented an able clerke vnto him, & yet his clerke were refused & another put in at the commaundement of that Pope or at the presentment of a straunger, yet y patron could haue no remedy for y wronge doen in the realme, for the incumbent might abide styll out of the realme. And therefore the lawe shall suffer no title in this case to fal to the Pope. And they say, y for a like reason it is that y lawe of the realme will not allow an excommunycament that is certified into the kings court vnder the Popes Bulles, & or if the party alleged sufficient answere, and yet coulde not obtaine his letters of absolution, the king shoulde not knowe to whom to direct his letters of absolution, & the party could not haue right at

that

that the law will in no wise suffer. D. The patron in that case may present to the ordinary as long as the church is voide, and if the ordinarye accept him not, the patron may haue his remedy against him in the realme.

But if the Pope will put in an encumbent before the patron present, it is reason that he haue the preferment as me seemeth before the kinge, S. when the ordinary hath surcessed his tyme he hath lost his power as to that presentment, specially if ꝑ collation be devolute to the Pope, And also when the presentment is in the Metropolitane he shall put in the clerke himselfe & not the ordinary, and so there is no default in ꝑ ordinary though he present not the clerk of the patron, if his time be past, and so their lyeth no remedy against him for the patron.

D. Though the encumbent abide still out of the Realme yet may a Quare impedit lye against him within the Realme, and if the encumbent make default upon the distresse and appeare not to shewe hys title: then the patron shal haue a writ to the Bishopp according to the statute & so he is not without remedy.

S. But in this case he cannot be sumoned, attached, nor distrained, within the realme. D. He may be sumoned by the Church as the tenant may in a writ of right of aduowson. S. There the aduowson is in demaund, & there the presentment is onely in debate, and so he cannot be summoned by the church here, no more then if it were in a writ of annuitie, and there ꝑ cause non returne is (quod Clericus est & beneficiatus, pos-

non habens laicum feodum vbi potest summoneri) And though he might be summoned in the Church, yet he might neither be attached nor distrained there, & so the patron should be without remedye. D. And if he were without remedy, he should yet be in as good case as he shoulde be if the king should present, for if the title should be geuen to the king, the patron had lost his presentment clerely for the time, though ỹ church abide stil void. For I haue heard say ỹ in such presentments no time after the law of the Realme runneth vnto the king. S. That is true, but there ỹ presentment shoulde be taken from him by right & by the lawe, & here it shoulde bee taken from him against the lawe, & there as the law could not helpe him, & ỹ the lawe will not suffer. D. Yet me thinketh alwap ỹ the title of the laps in such case is geuen by the law of the church, & not by ỹ tẽporal law, & therfore it forteth but lytle what the tẽporal law wil in it as me seemeth. S. In such countries where ỹ Pope hath power to determine the right of temporal things, I thinke it is as thou saist, but in this Realme it is not so. And the right of presẽtmẽt is a tẽporal thing, & a tẽporall inheritance, and therfore I thinke it belongeth to ỹ kings lawe to determine, & also to make lawes who shall present after the dy. monethes as wel as before. So ỹ the title of examination of abilitie or nonabilitie be not thereby taken frõ the ordinary. & in likewise it is of auoidance of benefices, that is to say, the it shalbe iudged by the kinges lawes when a benefice shalbe laied voide, & when not,

and

and not by the lawe of the Church as when a p̄so is made a Bishop & accepteth another benefice without licence, or resigneth, or is deprived, in these cases the common lawe saith, that ꝑ benefice is voide, and so they shoulde be, though a lawe were made by the Church to the contrary, and so if the Pope shoulde haue anye title in this case to present, it should be by the lawe of ꝑ Realme. And I haue not seene ne hard that ꝑ lawe of the realme hath geuen any title to the Pope to determine any temporall thing ꝑ may be lawfully determined by the kings court.

D. It seemeth by that reason that thou hast made now, that thou preferrest the kinges authoritie in presentments before the Popes, and that me thinketh should not stand with the law of god. sith the Pope is the viear generall vnder god. S. That I haue said proueth not: ꝑ for the highest preferment in presentment, he is to haue authoritie to examine the ability of the person that is presented, for if the presentee be able, it sufficeth to the discharge of the ordynary, by whom soeuer he be presented, & that authoritie is not denied by the lawe of the realme to belong alway to the spirituall iurisdiction, but my meaning is, that as to the right of presentmentes & to determine who ought to present and who not, and at what tyme, & when the Churche shall be iudged to bee voide, and when not, belonge to the kinge and his lawes, for els it were a thing in vaine for him to holde plees of aduowsons, or to determine the right of patronage in his owne courtes, and not to haue

autho-

authority to determine ꝑ right thereof, & those claimes semeth not to be against the law of god And so me semeth in this case ꝑ patronage is geuen ꝑ king. M. and if ꝑ king should haue righte to present, the might ꝑ church happen to cõtinue void for euer, for as we haue said before no time runneth to ꝑ king in such presentments. S. If any such case happe if ꝑ kinge present not, then may ꝑ ordinary set in a deputy to serue the cure as hee may doe when negligence is in other parts that may present & do not, & also it cannot bee thought ꝑ the king which hath ꝑ rule & gouernance ouer ꝑ people not only of their bodies, but also of their soules will hurt his cõscience & suffer a benefice cõtinually to stand without a curat no more then he doth in abusions ꝑ bee of his owne presentment.

Whether the presentment and collation of all benefices & dignities, bayding at Rome, belong only to the Pope.

## The xxxvij. Chapter.

IN the same summe, called Summa Rosella, in the title Beneficium primum, in the xiij. article. It is saide that benefices, dignities, and personages, bayding in the court of Rome may not bee geuen but by the Pope & likewise of the Popes seruants and of other that come, and goe from ꝑ court, if they dye in places nighe to the court within two leagues iourney, all these belong to the Pope, but if the Pope present not in ꝑ the

in a

within a moneth then after the moneth they to whom it belongeth to present, may present by theselues only, or by their vicar generall if they be in farre partes, & these sayings holde not in the lawe of the Realme. D. What is the cause that they holde not in this realme, aswell as in all other realmes. S. One cause is this. The king in this realme according to the auncient right of his crowne, of all his aduowsons that be of his patronage oweth to plet. And in likewise other patrõs of benefices of their presentment, and the plee of the right of presentments of benefices within this realme, belonge to the kinge and his crowne. And these titles cannot be taken frõ the kinge and his subiectes, but by their assent, and the lawe that is made therein to put away ỹ title, bindeth not in this realme, & ouer that before ỹ statute of 25. of Ed. the 3. there was a great inconuenience & mischiefe by reason of diuers prouisions & reseruations that the Pope made of the benefices in this realme cõtrary to the olde right of the king & other patrons in this realme, as wel to the Archbishoprickes, Bishoprickes, Deanries, and Abbeis, as to other dignities & benefices of the church. And many times aliens thereby had benefices within ỹ realme that vnderstode not the English tongue, so that they coulde not counsaile ne comfort the people when nede required, and by ỹ occasion great riches was conueighed out of the realme, wherefore to auoide such inconueniences: it was ordayned by the saide statute that all patrons aswell spirituall as temporall

should

should haue the presentments freely, & in case ꝑ collation or prouision were made by ꝑ Pope in disturbāce of any spiritual patron, that thē for that time the king should haue the presentmēt, & if it were in disturbāce of any lay patron: that then if ꝑ patron presētd not wiñ the halfe yeare after such voidāce, nor ꝑ Bishop of the place ināmoneth after the halfe yeare: that then the king should haue also the presentment, & that ꝑ king should haue the profits of the benefices so occupied by prouision, except Abbeis & Priors, & other houses ꝑ haue colledge & couent, & there the colledge and couent to haue the profits, and because the stat is generall & excepteth not such benefices as shall voide in the courte of Rome or in such other place as before appereth, therefore they be taken to be within the prouision of the said estatute alwel as ꝑ benefices that void within the realme, & all prouisours & executors of the said collations & prouisions & al their attorneis, notaries, & mainteiners, shalbe out of ꝑ protection of the king, & shall haue like punishment as they should haue for executing of benefices voidinge within the realme. D. But I cannot see how the said statute may stand with conscience, that so farre restraineth the Pope of his liberty, which as mee seemeth hee ought in this case of right to haue. S. because as I supposed patrons ought of right to haue their presentments, vnder such maner as they claime thē in this realme, as I haue said before, and as in the xxj. chap. of this booke apperteth more at large, and also for as much as it appeareth evidently

that

that great inconuenience followed vpō the said
prouisions, and that the said estatute was made
to auoide the same, which sith that time hath
bene suffred by the Pope, and hath bene alwey
vsed in this realme without resistance that the
saide estatute shoulde therefore stande with good
conscience.

¶ If a house by chaunce fal vpon a house that
is borowed, who shal beare the
losse.

## The xxxbiij. Chapter.

In the saide summe called Summa Rosella, in the
title Casus fortuitus, in the beginninge is put
this case, if a man lende to an other a house, which
is called there Depositum, and a house by chaunce
falleth vppon the house, whether in that case he
shall answere for the house? And it is answered there, that if the house were like to fall,
that then it cannot be taken as a chaunce, but as
the default of him that had the house deliuered
to him. But if the house were stronge, and of
likelihoode and by common presumption in no
daunger of fallinge, but that it fell by some
tempest or such other casualty, that then it
shalbee taken as a chaunce, and hee that had
keping of the house shalbe discharged, and though
this diuersity agreeth with the lawes of the
realme, yet for the more playner declaration
therof, and for the more like cases and chaunces
that may happen to goodes, that a man

in his keeping ꝑ be not his owne. I shall adde a litle more therto ꝑ shalbe somewhat necessary as me thinketh to the orderinge of conscience. If it fall that any may haue of another by way of lone or borowinge, money, corne, wine, & such other thinges where the same thing cannot be deliuered if it be occupied, but an other thinge of like nature, & like value must be redelyuered for it, & such things he that they be lēt to, may by force of ꝑ lone dele as his owne. And therefore if they perish, it is at his ieopardy, & this is most properly called a lone. Also a man may lende to another a horse, an oxe, a cart, or such other things that may be deliuered againe, and they by force of that lone, may be vsed and occupied reasonably in such maner as they were borowed for, or as it was agreed at the time of the lone, ꝑ they should be occupied, & if such things be occupied otherwise then according to thintēt of ꝑ lone, & in that occupacīō they perish, in what wise soeuer they perish, so it be not in default of ꝑ owner, he that borowed thē shalbe charged therin in law & conscience: & if he that borowed thē occupy them in such maner as they were lent for, and in that occupation they perish in defaut of him that they were lent to, thē he shal ass̄ were for them. And if they perish not through his default, then he that vseth them shall beare the losse. Also if a man haue goods to kepe to a certaine day, for a certaine reddimpcion for ꝑ kepinge, hee shal stande charged or not charged, after as default or no default shalbee in him as before appeareth, and so it is if he haue nothing

for the keeping, but if he haue for the keeping, & make promise at the time of ꝑ deliuery to rede liuer the sale at his peril, then he shalbe charged to al chaūces that may fal. But if he make that promise and haue nothing for keeping: I think he is not to no such casualties, but ꝑ bee wilfull & his owne default, for ꝑ is a nude, or a naked promise, whereupon as I suppose no action lieth. Also if a man finde goodes of an other, & they be after hurt or lost by wilful negligēce, he shalbe charged to the owner, but if they be lost by other casualty, as if they be layde in a house that by chaunce is burned, or if he deliuer them to an other to keepe that rūneth away with the: I thinke he be discharged, and these diuersities hold most commonly vpon pledges, or where a man hireth goods of his neighbor to a certain day for certain money, & many other diuersities be in the lawe of the realme, what shalbe to the ieopardy of the one, & what of the other, which I wil not speake of at this time. And by this it may appere that as it is cōmonly holden in the lawes of England, if a common carter goe by the wayes that be daungerous for robbing or daūue by night, or in other inconuenient time, & be robbed, or if he ouer charge a horse, whereby he falleth into the water or otherwise, so ꝑ the stuffe is hurt or impeyred, ꝑ he shal stande charged for his misdemeanour, & if her would gene refuse to cary it, vnles promise were made vnto him ꝑ he shall not bee charged for no misdemeanor that should be in him, ꝑ promise were hold. For it were against reasō & against good maners

and

and so it is in al other cases like. And all these diuersities be grauted by secundary cõclusions termed vpon the lawe of reasõ without any estatute made in that behalfe. And paraduenture lawes, and the conclusions therein, bee the more plaine, & the more open. For if any statut were made therein, I think verely no doubts, & questions would rise vpon y statut, then doth now when they be only argued and iudged after the common lawe.

¶ If a priest haue wonne much goods by saying of masse, whether hee may geue those goods or make a will of them.

## ¶ The xxxix. Chapiter.

In the said sume called Summa Rosella in the title clericus quartus y third article, is asked this question, if a priest haue wonne much goods by saying of masse, whether he may geue those goods or make a wil of them. Wherto it is answered there, that he may geue them, or make a will of the, specially whē a man bequetheth money to haue masses said for him, & y like lawe is of such thinges as a clark winneth by y reasõ of his office. For it is said there, y such thinges cõe to him by reasõ of his owne ꝓfession, which sayings I think accord to y lawe of y realme. But forasmuch as in y said article & in diuers other places of y said chapt, & in diuers other chapiters of the said sume, is put great diuersity betweene such goods, as a clarke hath by reason of hys

church, and such goodes as her hath by reason of his person, & that he must dispose such goods as he hath by reason of his church in such maner as is appointed by the lawe of the church, so that he may not dispose them so liberally, as he may the goods that come by reason of his owne person, therefore I shal a litle touch what priuiledge all men may doe with their goods after the lawe of the Realme.

First a Bishop of such goods as he hath with the Deane & the Chapter he may neither make gifte nor bequest, but of such goods as her hath of his owne by reason of his church or of the gift of his ancestors or of any other, or of his patrimony, he may both make gifts & bequests lawfully. And an Abbot of the goods of his church may make a gift, and that gift is good as to the lawe. But what it is in conscience that is after the causes intent & quality of the gift, for if it be so much that it notably hurteth the house or the couent, or if he geue away the bookes, or the chalices, or such other thinges as belong to seruice of God, he offendeth in conscience, & yet he is not punishable in the lawe, ne yet by any penal lawe after some mē, ne in none otherwise but by the lawe of the church as a waster of the goods of his monastery. But nerertheles I will not fully hold ỳ opinion, as to ỳ that belongeth necessarily to ỳ seruice of god, whether any remedy lie against him or not, but remit it to ỳ iugement of other. And a Deane and Chapter, & maister & brethren of goods that they have in their cures, and also of goods ỳ they haue with

Chapter

Chapter & brethren, the same diuersity holdeth
as appeareth before of a Bishop and the Deane
and chapiter, except that in the sale of a maister
& brethren the goods shalbe ordered as shalbee
assigned by the foundation. And moreouer of a
person of a church, vicar, and chauntry priest, or
such other, al such goods as they haue, as well
such as they haue by reason of ye parsonage, vi-
carage, or chauntry, as ye they haue by reason of
their owne person they may lawfully geue and
bequeth where they will after the common law o
And if they dispose part among ye parishioners
part to ye building of churches, or geue part to
ordinary, or to poore me, or in such other ma-
ner as it is appointed by the lawe of the church,
they offend not therein, vnles they chuse them
selues bounden thereto by dutie, & by auctoritie
of the lawe of the church, not regarding ye liuely
hood: for if they doe so it seemeth they resist the
ordinaunce of God, which hath geeuen power
to princes to make lawes. But there as the
same hath souereinty in temporal thinges as
well as in spiritual things, there same lay that
the goods of prelates must in conscience be dis-
posed as is contained in the said lawe, but that
perteineth not in this realme, for ye goods of spi-
rituall me be temporal in what manner soeuer they
come to the, it must be ordered after the temporal
law as the goods of the temporall men must be,
although it there were a statute made in this
sale of like effect in many points, as the lawe of
the church is, I thinke it were a right good and
profitable statute,

¶ Who shal succede a clerke that dieth intestate.

¶ The xl. Chapiter.

In the said summe called Rotella in the chapiter Clericus quartus the viij. article, is moued this question, who shall succede to a clerke þ dyeth intestate, and it is answered þ in goodes gotten by reason of the church, the church shall succede. But in other goodes his kinsmen shall succede after the order of the law, & if there be no kinsmen, then the church shal succede. And it is there said further þ goodes gotte by a clergyon secular by reason of his church or prebende shal not goe to his successour in þ prebend, nor to þ chapiter. But where one that is beneficed is not of the congregation, but he hath a benefice clerely seperate, as if he be a person of a parish church or is a prelate, or an Archdeacon not beneficed by þ chapiter, then þ goodes gotte by reason of his benefice, shal goe to his successor and not to the chapiter, and none of these sayings hold place in the lawes of Englande. Q. what is then the lawe if a person of a Churche or vycar in the countrey die intestate, or if a Clergyon secular be also a person & haue goodes by reason thereof, & also by a prebend þ he hath in a cathedral church, & he die intestat, who shal haue his goodes. A. It þ comō lawe þ ordinary in al these cases may administer þ goodes & after he shall commit administratiō to þ next faithful friende

&

of him that is dead intestate that will desire it, as he is bound to do, where lay men that haue goods dye intestate. And if no mā desire to haue administration, then the ordinary may administer & see the debts payd, & he must beware that he pay the debts after such order as is appointed in the cōmon lawe, for if he pay debts vpon simple cōtracts before an obligatio he shalbe cōpelled to pay the debt vpon the obligatio of his owne goods, if there be not goods sufficyent of him that died intestate, & though it be suffred in such cases that the ordinary may pay pound and pound like, yet is to apportion the goods amonge the detteurs after his discretion, yet by strigor of the cōmō lawe, he might be charged to him, y. ma first haue his iudgement against him. And furthermore by that is said afore, in y last chapter appereth, y if a bishop y hath goods of his patrimony, or a maister of a colledge, or a deane of goods that they haue of their owne enioy to themselues, die intestate, y y ordinary shal cōmit administratiō therof as before apereth, & if they make executors then the executours shall haue the ministration therof. But the heires nor the kinsman by that reason only, that they be heires of kin to him y is deceased, shal haue no medling with his goods, except it be by custome of some cōtreys where the heires shal haue their lones, Or where y children (y debts & legacies paide) shal haue a reasonable part of the goods after the custome of the countrey.

¶ Addition,

¶ If a mā be outlawed of felony, or be attainted for murder or felony, or that is an Alcitimus, may be slaine by euery stranger.

¶ The xlij. Chapiter.

IT appeareth in ỹ said summe called Sūma Angelica in the xxj. Chap. in the title of Alcitimus the ij. Paragrafe, ỹ he is in an Alcitimus that will slay nā for money at the instance of another mā that will moue him to it, & such a one may lawfully be slaine, not only by ỹ iudge, but by euery priuate ꝑson. But it is said there in ỹ iij. Paragrafe, that he must first be iudged by the law as an Alcitimus or he may be slaine of his goods seyzed. And it is said further there in the ij. Paragrafe, that also in cōscience such an Alcitimus may be slaine if it be done through zele of Iustice & els not. Is not the law of the realme like wise of men outlawed, attainted, or iudged for felony?

¶ In the law of the realme there is no such law, ỹ a man shall be iudged as an Alcitimus if it ꝑ nā be in full purpose for a certaine sūm of money ỹ he hath receyued to slay a man, yet it is no felony, ne murder in ỹ law till he hath done the act, for intent in felony ne murder is not punishable by the cōmon law of ỹ realme, though it be deadly synne before god, but in treason or in some other particuler cases by statute ỹ intēt may be punished. And though a man in such case kill a mā for money: yet he shal not be attainted ỹ he is an Alcitimus. For as it is said

before

before there is no such terme of Assisinus in ꝑ lawes of the realme, but he shall in such case be arrained upon the murther. And if he confesse it or plead that he is not guilty & is found guilty by xij. men: he shall have iudgement of life & of membre, & shal forfait his landes and goods. And the law is it in appeal or ought of the murther if he stand dumbe & will not answere to the murther, he shall be attainted of the murther, & shal forfait life, landes, & goodes, but if he be arrayned of the murther by an indictment & ꝑ kinges suit, & thereupon standeth dumb and will not answere, there he shal not be attainted of the murther, but he shal have paine fort & dure, (that is to say) he shalbe pressed to death, & he shal thus forfeit his goods, & not his landes. Lo in case of these cases (that is to say) though a man be outlawed for murder or felony, or be arrained, & that he be of perfect memorie, yet it is not lawful for any mā to murther him or slay him, & to put him to execution but by authority of the kinges lawes. In so much that if a man be iudged to have paine fort & dure, & the officer beheadeth him, or on the contrary wise putteth him to paine fort & dure, where he should behead him, he offendeth the law.

And if an officer which hath authoritie to put a man to death, may not put him to death but according to the iudgement, thē me thinketh it should follow that no straunger & straunger may not put such a man to death of his owne authority, but commaundement of the lawe.

But if ꝑ iudgement be that he shalbe hanged

in

in chaines, & the officer hangeth hym in other things and not in chaines, I suppose he is not guilty of his death, but some saye he shall there make a fine to the king because he hath not followed the wordes of the iudgement.

Also if a man that is no officer wounde arrest a mā that is outlawed, abiured, or attainted of murder or felonyas is alegedsaid, & he disobeyeth the rest, & by reaso of ꝑ disobedience he is slaine I suppose ꝑ other shall not be impeched for his death, for it is lawfull vnto euery man to take such persons & to bring them forth ꝑ they may be ordered according to ꝑ law. But if a capias be directed vnto the sherife to take a man in an action of debt or trespas, there no mā may take him but he haue authority frō ꝑ sherife. And if any mā stirre of his owne authority to take him, & he resisteth & in the resisting is slaine: he ꝑ would haue taken him is guilty of his death.

## ¶ Addition.

¶ Whether a man shalbe bounden by the act & offence of his seruant or officer.

## ¶ The xlij. Chapiter.

I ¶ The said Summe called Summa Angelica, in the title dominus iiij. Paragrafe, is asked this question, whether a man shalbe charged in his household, And it is saide there that he shal

when

when the houshold offendeth in an office or ministry that the maister is the chiefe officer of, & he hath the worke & the profit of the houshold: for it shalbe his default ỹ he would chose such seruants, for he ought to appoint honest psons for it is said there, ỹ it is to be vnderstand truly and not crimynally, wherby as is said there, he that is a gouernour is bounde for the offences of his officers, and that the same is to be holden of a captaine, that he shall be bounde for the offence of his squires. And an hoste for his gelde & such other. Neuertheles it is sayd there that nowaies doth lye there rehearled, but ryghts of the office be an open or publike office, as an office of power or other like. For suffyseth to doing for thy him that offended. But it is doubtefulle if it be not a publike office, but an hoste or a tauerner or other like, ỹ if any houshold shead not in ỹ office, the lord is not bounde for the lawe: but in conscience, he is bounde if they hurt in default by not correcting them, for he is bounde to correct the vyces by example, & if he find any incorrigible he is bounde to put him away except he haue plumpteous that yf he doe so, he will be the worse, & then he may do that he thinketh best, and he is excused and else not. & for to such persons it is sayd [illegible] resistatis approbare, ỹ that is to say hym error that is not resisted is approued. And though diuers of the sayings before rehearled agree with the law of ỹ realme, yet al do not so, & also they ỹ be to be obserued by authority of ỹ lawe of ỹ realm, & not by ỹ authority alleged ỹ said pagan[e]

And therfore I intende to treat somewhat
where the maister shalbe charged by his seruant,
or deputy, or by them þ be vnder him in any of-
fice, & where not, & then I entend to touche so-
other thinges where the maister after the lawes
of þ realme shalbe charged by the act of his ser-
uant in other cases not concerning offices, and
where not.

First if a man be committed to warde vppon
arreragies of accompt, & the keper of the prison
suffereth him to go at large: thē an actiō of debt
shal lie against him. And if he be not sufficient,
thē te lieth ayenst him permitted & keping of h
prisone vnto him, & that is by reason of þ fact
of hym self, the xj. chapiter.

Also if the maisters of frenchises that haue ne-
uiling of writs make a false retourne, þ they shal
haue fourtene daies after to alowe of to ieale a fal-
se of other thinges, as shall as he shall haue ag-
ainst þ shiriffe, but at the parliament shalbe
only layd vnto the bailiffe, & not vnto the lord of the
franchise, & that doth appeare by the statute
in the firste yere of king Edward the iij. the fifth
chapitr. But if an vnder shiriffe make a retourne
wherupon the shiriffe shalbe amerced, there the
high shiriffe shalbe amerced for the retourne
made peculiarly in his name. But if it be a false
retourne wherupō an actiō of deceit lieth, as if
false writ may be brought against þ vnder shiriffe
& not the statute that is called statutum de
mercatoribus, &c.

If the kinges butler make deputies, he
shal answere for his deputies as for himself.

As appeareth in the statute made in ỹ xvb. yeare of kinge Edward the third De prodicionibus the xij. Chapter.

Also in the statute that is called Statutum scaccarii, it is enacted amonge other thinges that no officer of the Eschequer shal put any clarke vnder him, but such as hee will answere for. And for as much as the statute is generall: it seemeth that he shall answere as well for an vntruth in any such clarke, as for an ouersight.

Also in the xiij. yere of king Ed. the 3. the ix. Chapter, it is enacted, that al Gailes shalbe appointed againe to the shires, & that the Shirife shal haue the keeping of them, & that the shirife shal make such vndergardeins for ỹ which they will answere. And neuertheles I suppose that if there be an escape by default of ỹ Gailer, that the king may charge the gailer if he will. But it is no doubt but he may charge ỹ shirife by reason of his statute if he will. But if it be a wilfull escape in ỹ Gailer which is felony in him, the shirife shal not be bounde to answere to the felony, ne none other but the Gailer himselfe, & they that assented to him.

Also if a man haue a shirifwike, constableship, or bailiffwike in fe, whereby he hath ỹ keeping of ỹsioners, if he let any to repleuine ỹ be not repleuisshable & therof be attaint, he shal leese the office, &c. And if it be an vndershirife, constable, or Bailife that hath ỹ keping of the ỹsion, and doth it without knowledge of the lord, he shal haue imprisonment by iij. yeres, and also be halde raunsomed at the kinges will, as appeareth

reth in the statut of west. the first the xb. chapter. And so it appeareth ỹ in this case, he that is the lord of the prison is not bound to aunswere for the offence of them that haue the rule of the prison vnder him, but that thei shal haue the punishment themselues for their misdemeanour.

Also there is a statute made in the xxbij. yere of king Edward ỹ iij. the xix. chap. that is called the statute of the staple, wherby it is ordeined ỹ no marchant, ne none other man shall lese their goods for ỹ trespas, or forfait of their seruants, vnles it bee by cõmaundement of his master, or that hee offende in the office that his maister hath put him in, or els, that the maister shalbe bounde to an aũswere for the deede of his seruant by the lawe marchant, as in some place it is vsed.

Also it is enacted in the xiij. yere of K. Edward the iij. the viij. Chapter that wapentakes and hundredes, that bee seuered from the counties shalbe adioined againe vnto them, and that if the shirif holde them in his owne hande, that he shal put in them, such bailifs that haue lands sufficient, & those for which he will aunswere, & that if he let thẽ to ferme, that they be let to the auncient ferme, but after it is prohibited by the statut of the xxiij. yere of king Harry the vi. the v. Chapter, That no shirife shal let his Bailiwikes, nor wapentakes to ferme. And when they be once in the shirifes owne handes, and the shirifes put in Bayliffes, they be but as vnder bailifes to the king and the shirife the high bailife, & they in maner ỹ shirifes

seruants

seruants & put in onely by him. And therefore by the said statute of king Edw. the iij. he shall answere for thē if they offēd in their office, but if the shirife let them to ferme: then though the shirife offend the statut in that doing: yet whether he shalbe charged for their mildemeanour in the office or not, is a great doubt to some mē, for they say þ this statute is onely to be vnderstād where þ bailiwikes be in the shirifs handes, but here they be not so, ne the bailifs be not his seruants, but his fermours. And therefore they say that if the shirife shalbe charged for thē: It is by þ cōmon law, & not by þ statute aforesaid.

Also in the ij. yere of kinge Henry the vj. the xiij. cha. it is enacted, that officers by patent in euery court of the kinge, that by vertue of their office haue power to make clarkes in the sayde courtes shalbe charged, & sworne to make such clarks vnder thē, for whom they will aūswere.

Also þ Hospitalers, & templers be phibit they shall holde no plee that belonge to the kinges courts, vpon paine to yelde damages to the pty grued, & to make raūsome to the king, that the superiors shal aūswer for their obediences, as for their owne dede, vsell. the ij. the xliij. chap.

Also the sergeant of the Catery shal satisfy al the debts, damages, & executions that shalbe recouered against any that is purueior, or achator vnder him, and that offend against the statut of xxxvj. of Edw. the iij. or against this statute of xxiij. of Henry the vj. In case the purueyor, or achatour be not sufficient, &c. And the party plaintife shal haue a scire facias against the sayde

sergeant

ſergeaunt in this caſe to haue execution, as appeareth in the xxiij. yere of king Henry the vi. the .i. Chapter.

Alſo if a man be ſent to priſon vpon a ſtatute marchant by the Maior, before whom ꝓ recognizaunce was taken, & the Gaoler will not receyue him, he ſhal anſwere for ꝓ dett if he haue to do with, & if not then he ſhal anſwere that receyued the gaole to him, as appereth in the ſtatute called the ſtatute marchant.

Alſo if outragious tolle be taken in ꝓ towne marchant, if it be the kings towne let to ferme, the king ſhall take the franchiſe of the liberte into his handes. And if it be done by the loyde of the towne, the king ſhal doe in likewiſe. And if it be done by the Baylife, putting owing ꝓ loyde, he ſhal yelde againe as much as he hath taken, and ſhal haue impriſonment of xl. daies. And ſo it appereth ꝓ the lord in this caſe ſhal not daunger for his Baylife, well the ſtatut ꝓ xo. chapt. And in al the caſes before reherſed, where ꝓ ſuperiour is charged by the default of him that is vnder him, yet in whoſe default the ſuperiour is charged, is bounde in conſcience to reſtore him ꝓ is ſo charged through his default. Except the caſe before reherſed of the holpitelers, for al that the obedienter hath, is the ſuperiours if he will take it. And therefore what recompence ſhalbe made by the obedienter in that caſe, is all at the will of the ſuperiour. And now we ſhal come to ſhew ſome perticuler caſes, where the ſuperiour ſhal the lawes of ꝓ realme ſhalbe charged by the act of his ſeruant, Baylife, or deputy, and

when

where not, and so for to make an ende of this Chapter.

¶ First for trespasse of battery, or wrongfull entre into landes or tenementes ne yet for felony or murther, the master shal not be charged for his seruaunt, vnlesse hee did it by his commaundement.

¶ Also if a seruaunt borowe money in his maisters name, the maister shal not be charged with it, vnlesse it come to his vse, and that by his assent, and the same lawe is if the seruaunt make a contract in his maisters name, the contract shal not binde his maister, vnles it were by his maisters commaundement, or that it came to the maisters vse by his assent. But if a man sende his seruant to a faire or market, to buy for hym certains thinges, though he commaunde him not to buy them of no man in certaine, and the seruant hath accordingly, the maister shalbe charged, but if the seruant in that case buy them in his owne name, not speaking of his maister, the maister shall not be charged, vnles the things bought came to his vse.

¶ Also if a man send his seruaunt to the market with a thing which he knoweth to be defective, to be solde to a certaine man, and hee selleth it to him: there an action lieth against the maister, but if the maister bidde him not sell it to any person in certaine, but generally to whom hee can. Then he selleth it accordingly, there lieth no action of deceipt against the maister.

¶ Also if the seruaunt keepe the maisters fyre negligently, whereby his maisters house is burnt

and his neighbours also, there an action lieth a-gainst the maister. But if the seruant beare fire negligētly in the streate, and thereby the house of an other is burned, there lieth no action a-gainst the maister.

Also if a man desire to lodge with one, that is no common hosteler, and one that is seruant to him that he lodgeth with, robbeth his chamber, his maister shall not bee charged for that rob-bing, but if he had bene a common hosteler, he should haue bene charged.

Also if a man be gardein of a prison where is a man prisoned condemned in a certeyne summe of money, & an other that is in prison for fel-ony, and a seruaunt of the gardeine that hath the rule of y prison vnder him, wilfully letteth y both escape, in this case the gardeine shall an-swere for the debt, and shall pays a fine for the escape of the other, as for a negligēt escape, and the seruant only shalbe put to aunswere to the felony, for the wilfull escape.

Also if a man make an other his generall re-ceyuour, and that receyuour receyueth money of a creditour of his maister, and maketh him acquitance, & after payeth not hys maister, so that payment dischargeth the creditour, but if the creditour had taken an acquitaunce of hys without paying him his money, that acquitaun-ce only were no bar to the maister, vnless he made him receiuor by writing, and gaue him auc-torite to make acquitances, and then the auc-torite must be shewed. And if the creditour in such case by agreement betweene the receyuour

and him, deliuered to the receiuour a horse or an other thing in recompence of the debt, that deliuery dischargeth not the creditour, vnles it be deliuered ouer vnto the maister, and hee agree to it. For the receiuour hath no such power to make no such comutation, but his master geue him special commaundement thereto.

Also if a seruaunt shewe a Creditour of his master, that his master sent him for his money, and he paieth it vnto him, that paimēt dischargeth him not, if the maister did not send him for it in deede, except that it come after vnto the vse of the maister by his assent.

Also if a man make a bailife of a manor, & after the lord of whom the manor is holde graūt the seignory to an other, & the bailife after paieth the rent to the graūtee, that payment of the rent counteruaileth no attournment though it were by fine, ne shall not binde his maister, till he attourne himselfe, but if the lord of whom y land is holden disseised one of y seignoury, & the bailife payeth y rent to the heire of y lord, y is a good seison to the heire, though the baylife had no cōmaundement of his maister to pay it. For it belōgeth to his office to pay rēts seruice, but not rent charge, as some men say.

Also an encrochment by the baylife shall not bind the master in auowry, if he had no cōmaundement of the maister to pay it. Also if there be lords, meine, and tenant, & the tenaunt holdeth of the meine as of his manor of D. the meine maketh a bailife, and after the tenaunt maketh attornment, the lesse tendeth notice to the bailife.

and her accepteth his rent & the arrerages, this notice shal not binde the lord, ne compell him to alter his auowry, for þ office of a bailife streatcheth not thereto, but hre must haue therein a special commaundement of his maister.

¶ Also if a seruant rite on his maisters horse to doe an errant for his maister into a Towne, hath authority to make attachements of goods vpon plaints of debt &c. and there vpō a plaint of debt made against the seruaunt, the maisters horse is attached by the officers, thinking that the horse were his owne, and because þ seruant appereth not, the officers seise the horse as forfeit, in this case the lorde shall haue an action of trespas against the officers, & this attachement for the debt of his seruāt, shal not binde him, &c. but that an hoste or keeper of a tauerne shall be charged for their guestes, vnlesse it bee done by their assent, or cōmaundement. ¶ doe not remember that ¶ haue read it in the lawes of England.

## Addition.

¶ whether a villaine, or a bond man may geue away his goods.

## ¶ The xliij. Chapter.

¶ appeareth in the said summe, called Summa angelica in the title donatio prima the ix. Paragrafe, that a bond man, nor a religious man, nor a Monke, ne such other that hath nothing in proper, may not geue, but it bee by licence of their superiour, but that sayinge is not as it is

saide

said there, to be vnderstande of religious persons þ haue lawfull ministration of goods, for if they geue with a cause reasonable, it is good, but without cause they may not.

¶ Also if they by the licence of the Prelate & the counsaile of the more part of the couēt abide a whyle as gode on pilgrimage, they may geue to other honest scholers & pilgrimes be reasonably wont to do, & they may also geue almes where there is great neede, if they haue no time to aske licence.

¶ Also if they se one in extreme necessity they may geue almes though their superiours prohibite thē, for then al thinges be in cōmō by the lawe of god. And therefore they be bounden for to do it, as appeareth in þ aforeland summe called Summa angelica in the title Elemosina, þ .vj. Paragrafe. Doth not the lawe of Englande agre with these diuersities. S. For as much as the question is onely made whether a wilfull & vnwise man may geue away hys goodes or not: And it seemeth that after the fourmes in the title which thou hast before rehearsed, that he ne none other that hath no property may not geue, wherby it appeareth that the said Summa taketh it, þ a bond mā should haue no property in his goods, & that therfore no gift should be valid. I shal somewhat touch what propertye and what authoritye a bilieue hath in his goodes after the lawe of the Realme, and what authority the lord hath ouer thē. And I will reuoke the generalities that thou hast remembred before of religious per-

lones to them that lift to treate further therein hereafter.

Firſt if a villaine haue goodes eyther by hys owne proper buying and ſellinge, or otherwiſe by the gift of other men, he hath as perfect a propertie, & alſo as whyle intereſt in them, and may as lawfullye geue them away as any freeman may. But if þ lorde ſeyſe them before hys gift: then they be the lordes, & the intereſt of the villaine therein is determined.

Alſo if the Lorde ſeyſe parte of the goodes of his villayne in the name of all the goodes that the vyllayne hath or ſhal hereafter haue, that ſeyſure is good, for all the goodes that he hadde at that time of the ſeaſure. But if goodes come to the villaine after the ſeaſure he may lawfullye geue them away notwithſtanding ſaid ſeaſure.

Alſo if the Lorde claime al the goodes of the villaine, & ſeaſeth no part of them, that ſeaſure is void, and the gift of the vyllaine is good notwithſtanding that ſeaſure.

Alſo if a manne be bounde to a villaine in an Obligation in a certaine ſumme of money, and the lord ſeiſeth the obligation, then þ obligation is his, but yet he can take no action thereupon due in the name of the villaine, and therefore if the villeine releaſe the debt, the lorde is barred by that releaſe.

Alſo if a woman be a nieſe, and ſhe marieth a free man, þ goodes immediatlye by the mariage be the husbands, and the lord ſhall come to his

to make any seylure, and if the husband in that case maketh his wife his executrix and dieth, & the wife taketh ꝑ same goodes ageine as executrix to her husbande, yet it shall not bee lawfull for the lord to take the from her, though she bee maried as she was before the mariage.

Also if goodes bee geuen to a man to the vse of a villaine, and the lord seyseth those goodes, ꝑ seisure after some men is good by the statute made in the xix. yere of king Henry the seuenth, whereby it is enacted that the lorde shall entre into landes whereof other persons be seised to ꝑ vse of his villaine, & they say that the same statute shalbe vnderstande by equitie of goodes in vse, as well as of landes in vse.

Also if a villeine be made a priest, yet nerethelesse the lorde may seise his goodes & landes as he might before. And vntil the seisure he may alie them and giue them away as he might doo fore he was priest. And in this case the Lorde may order him, so that he shal do him such seruice as belongeth to a priest to doe, before anye other, but he may not put him to no labour nor other business but that is honest and lawful for a priest to doe.

Also if a villeine enter into religion in ꝑs yere of ꝑwose, he may dispose his goodes as hee might haue done before he took ꝑ habite vpon him. And in like wise ꝑ lord may seise his goodes as hee might haue done before, but if hee after make executours, & be professed. And ꝑ executours take the goodes to the ꝑformaunce of

the wil, then the lord may not seyse the goodes though the executors haue them to ꝑforme nuance of the wil of him that is his willem, no in that case the lord may not seyse his bodye nor put him to no maner of labour, but must suffre him to abide in his religion vnder the obedience of his superiour as other religious ꝑsones that be not bondemen: And the lord hath no remedy in that case for losse of his bondman, but onely to take an action of trespas against hym that receiued him into religion without his licence, and therupō to recouer damages as shall be assessed by xij. men. Many other cases there be concerning the gift of the goods of a villeyne, wherefore I will speake no more at this time, for this that I haue said sufficiently to shew that the knowledge of the kinges lawe, is right expedient to the good order of conscience concerning such goodes.

¶ If a clarke be promoted to the tytle of his patrimony, & after selleth his patrimony & after falleth to pouerty, whether shal he haue his title therin or not.

## ¶ The xliiij. Chapter.

IN the said summe called Rosella in the title Clericus quartus, the xxiij. article it is asked if a Clerke be promoted to the title of his patrimony, whether he may alienate at his pleasure, & whether in that alienation the saide pertie needeth to be kept that is to be kept in alie-

nation

nations of thinges of the church, and it is answered there y^t may not bee alienes no more then the goodes of a spirituall benefice, if it bee accepted for a title, and expressely assigned vnto him. In that it should goe as into a thing of the church, except hee haue after an other benefice ceased of his owne liue. But if it be secretly assigned to his title, some agree it may be alienes, & in this case by the lawes of the realme, yt may be lawfully alienes whether it bee secretly or openly assigned to hys title, for the ordinary neyther y^e party himselfe after the old customes of the realme, haue no authoritie to binde any inheritaunce by vertue of the spirituall lawe, and therefore the lande after it is assigned & accepted to hys title, standeth in the same case as to be bought, sold, charged, & put in execution as it did before. And therfore it is good that the maundate that ordinaries doe admit such land for a title, so the intent that he that is promoted should not fall to extreme poverty, & goe openly a begging, without his knowing howe the canon lawe will serue therin, for of more right & inheritaunce by this Realme ought to be ordered by the kinges lawes, and inheritance cannot be bounden in this Realme but by fine, or some other matter of record, as by feoffement & such other, or at least by a bargain that chaungeth an vse. And ouer that to assigne a state for terme of life to him that hath a fee simple hereafter, is void in the lawes of England, & therefore it is by such a matter that is good by pay & couenaunt or els by writ, and in this case is no

such

such maner of cõclusion, and therefore all that is done in such case in alligning of the said title is voide. Also there is no interest þ a man hath in any maner landes or tenements for terme of life, for terme of yeares or otherwise, but that he by the law of the realme may put away his right therin if he wil. And then when this man alieneth his lande generallye, it were against the law of the realme that any interest of such a title should remayne in him againste his owne sale, & there is no diuersitie, whether þ allignement of the title were open or secret, and so the title is voide to al intentes. And in likewise if a house of religyon or any other spirituall mã that hath graũted a title after the custome vsed in such tities, sell all the landes and goods þ they haue, that sale in the lawes of England is good as againste þ title, & the buyer shall neuer be put to aunswere to the title. Also some say that vpon the common titles that be made dayly in suche case, that if hee fall to pouertie that hath the title, hee is without remedye, for they be so made that at þ common law there is no remedy for them, and if he take a suit in the spirituall court, many mẽ say that a prohibition or a præmunire lieth. And therfore it were good for ordinaries in such case to counsaile vs them that be learned in the law of the realme to haue such a forme deuised for making of such titles, that if made be, would serue them that they be made vnto, or els let thẽ be promoted without any title, and so trust in God that if they serue him as they ought to do, he wil prouide for the

to haue sufficient for thē to liue vpon. And be-
ide these cases ꝑ I haue remēbred before, there
be many other cases put in the saied sūmes for
the well ordering of cōscience, that as me thin-
keth are not to be obserued in this realme, neyt-
her in lawe nor in conscience.

Doest thou thē thinke ꝑ their was default
in them ꝑ drewe the said summes & put there-
in such cases & such solutiōs ꝑ as thou thinkest
hatt conscience, rather thē to geue any light to
it, specially as in this realme.

I thinke nos default in them, but I thinke
ꝑ they were right wel and charitably occupied
to take so great payne and labour as they dyd
therein, for the wealth of the people & clearing
of their conscience, for they haue therby geuen a
right great light in conscience to al countreys
where the lawe Ciuil and the lawe Cannon, be
ded to tempoꝛal thinges. But as for ꝑ lawes
of this realme they knew thē not, ne they were
not bound to know them, & if they had know-
en thē, it would litle haue holpē thē for ꝑ cōn-
treys that they most specially made their trea-
tices for, and in this cōtrey alsō they be right
necessary and muche profitable to all men for
such doubts as rise in cōscience in diuers other
maners not concerning the lawe of the realme.
And I marualle greatlye that none of thē that
in this Realme are moste bounden to doe that
ꝑtein is to kepe the people in ꝑright iudge-
ment, and in a clearenesse of conscience: haue
done no more in tymes passed to haue the lawe
of the Realme knowen, then they haue done,

for

for though ignorance may sometime excuse, yet the knowledge of the truth, and the true judgement is much better, & sometime though ignorance excuseth in part, it excuseth not in all, & therefore me thinketh they did very wel if they would yet be callers on to have that point reformed as shortly as they could. And now because thou hast well satisfied my minde in many of these questions that I have made: I purpose for this time to make an ende. D. I pray thee yet shew me or ỹ thou make an end more of these cases, that after thine opinion be set in diuers bookes of learning of conscience, that as thou thinkest for lacke of knowledge of ỹ law of the realme, doe rather blinde conscience then geue a light vnto it, for if it be so, then surely as thou hast said it would be reformed, for I think verely the lawes of the realme in many cases must in this realme be obserued as well in the science as in the iudicial courtes of the realme. S. I wil saith god wil shewe to thee shortly some other questions that be made in the saied summe to geue thee, & other occasion to see them in the opinions of the said summes, and to say farther theruppon how the opinions & the lawes of the realme do agree together. And yet beside these questions that I entend to shewe vnto thee, there be many other questions of ỹ said summes ỹ had as great nede to be more plainly declared according to the lawes of the realme as those that I shal shewe thee hereafter of, as I haue spoken of before, but to the cases that I shal speake of hereafter I will shewe thee the

thinge

thing of my conceipt in them, but will leue it to other that will of charity take some further paine hereafter in that behalfe.

¶ Diuers questions taken out by the Studēt of the lawes, called Summa Rosella, & Summa Angelica, which he thinketh necessary to be lokked vpon, & to be seene howe they stande and agree with the lawe of the Realme.

## The xlv. Chapter.

THe firste question is this, whether a custome may breake a lawe positiue, Summa Rosella, titulo consuetudo Paragrafe xiij.

The seconde is if a man attainted or banished be reuoked by the prince, whether shall that restitution breede to the goods, Summa rosella in the title Dampnatus in principio.

Item if a man be outlawed of felony, abiured or attainted of murther, or felony, or he that is accessarie may bee slaine by strangers, & se like matter thereto, Summa Angelica, in ye title Accessarius Para. vj.

This question is somewhat answered to, in the addition, as appeareth before in the xlj. Chapter.

Item whether the maister shalbe bounde by the act, or offence of his seruant, or officer, Summa

ma Angelica in the title dominus Para. iiij.

This question is aũswered to in a new addition, as appereth before in the xlij. Chapter.

Item whether a villaine may geue away his goods, Summa Angelica, in the title donatio prima. Para. ix.

This question is aũswered to in a new addition, as appereth before in the xlij. Chapter.

Item whether an Abbot may geue &c. Summa angelica, in the title donatio j. Para. &c. xxxix.

Item whether a woman couert, may geue away any good. And it is aũswered, Summa Angelica in ỹ title donatio j. Paragrafe xj. that she may not, ẅout she haue goods beside her dowry, but onely in almes.

Item if a man do treason, whether his gift of goods after, before attaindre bee good, Summa angelica, in the title donatio j. Para. xij. and it seemeth there nay, and looke Summa Angelica in the title alienatio Para. xxiiij.

Item if a man wittingely make a contract betweene two kinfolke, or other that may not lawfully mary together, whether hee hath forfeit his goods, Sũma angelica, in the title donatio j. Para. xiiij.

Itẽ whether the father may geue to ỹ sonne Summa angelica, in the title donatio j. Para. xix. and Sũma Rosella, in the title donatio ij. Para. xlij.

Item whether a man may geue above b. &c. absque insinuatione Summa Angelica, in the title donatio prima. Para. xx.

Item whether a gifte shalbe anoyded by an in-

ingratitude, Summa roselia, in the title donatio 1. Para. xvij. & xxix. and there it is said that the gift is voide by the lawe of nature, & looke Summa Angelica, in the title Donatio prima Para. viij. & xlv.

Item where any gift betweene the husbande and the wife may be good, and it is said yea, whē the husbande geueth it, causa remunerationis, Summa roselia, in the title donatio 1. Paragra. xxij.

Item if a man make a will, and enter into religion, whether he may after reuoke the will, & it is said, that Friers minours may not, and other may, Summa Roselia, in the title donatio prima. Para. xxxv. in fine.

Item if a man geue an other a towne with al the rightes that he hath in the same, whether ꝑ patronage &c. and the tithes passe. Summa roselia, in the title ecclesia 1. Para. lvj.

Itē whether al that is bought with the mony of the church be the churches. Summa Roselia, in the title ecclesia 1. Para. lvj.

Itē if a gift made to a monastery may be auoyded by that the geuer hath children after ꝑ gifte, Summa Angelica, in the title Donatio 1. Para. xiij.

Itē if a man buy a thing vnder the half price, whether he be bounde by the lawe to restore, &c. Summa roselia, in the title emptio, & venditio. Para. lvj.

Item whether a common thiefe vel communis depopulator agrorum may abiure, Summa Roselia, in the title excommunicatus ij, in principio. Et habetur

betur ibi in fine quod licet leges excipiant plures perso
tum per ius canonicum legibus derogatum est.

Item whether a man shall take the church b
great enormious offences that is not murther
nor felony. Summa Roselia, in the title Ec
nitas ij. Paragrafe iij. pj.

Item if a man take one in the high sonn
drawe him out, & there he doeth him to de
shall have ye punishment yt is ordained for the
strike one in the highway. Summa Roselia
the title Emunitas v. Paragrafe iij.

Item whether he that taketh the church
after for yt office he iudged to death. Summa
selia, in the title Emunitas ij. Paragrafe

Item whether the bishops palleis be exem
ary. Summa Roselia, in the title Emunitas
Paragrafe viij.

Item whether the dignity of the Bisho
priesthode discharged bondage. Summa ro
in the title Episcopus in principio.

Item whether a clarke is bounde to pay
impositions, or tallages, for his patrimony
otherwise, Summa roselia in the title ecc
nicam ij. divisione oct. Para. iij. and ch. x
divisione nona. Paragrafe j.

Item if it were ordeined by statute, that
man shall geve the kinge ij. li
thes a clarke be bounde to geve it for his
prebend. Summa roselia in the title eccle
nication j. divisione nona. Para. iij.

Item if it be ordeined by statute, that
shall not be sued upon a dead person, but
a certayne clothe, or thing

dels, whether the statute bee good & it is left for a question. Sūma rosella in the title excōmunicatio. huiusmodi. viij. Para. viij. in fine.

Item if a man make a lease of a Mil for time of yeres, & it is agreed ỳ the lesse shal grind the lesso⁹ tolle free during the time, aft the lesso⁹ is made a Erle or a Duke, & hath greater houshold the before, whether ỳ lesse bee wūde there, &c. Sūma rosella in the title familia Para. v.

Item if a maister will not pay his seruaunts wages ỳ hath serued him faithfully, whether ỳ the seruant may take secretly as much goods of the maisters, &c. & if he doe whether hee is wūde to restitution Sūma rosella in the title familia Para. vj.

Itē things immouable of ỳ Church may not be geuen. Sūma rosella in ỳ title of feodū. Paragra. j. & is there in principio what feoduin is

Item whether the lonnes bastardes, and the lonnes lawfully begottē shal inherite togrether Sūma rosella in the title filius Para. j.

Item whether father and mother, may succede to their bastards, Summa Rosella in the title filius Para. iij.

Itē whether the father may leane any of his goods to his bastardes. Sūma Rosella in the title filius Para. v. & Sūma Rosella in the title societas Para. xviij.

Item whether the offence of the father shall hurt the lonne in temporal things. Sūma rosella in the title filius.

Itē if a man geue all his landes, and goods to his children, whether a bastarde shall haue a-

E. j ny part

ny part Summa rosella in ỹ title filius. Pa. xxij.

Itē to whom treasour ꝯud belongeth. Summa rosella in the title furtū Para. xj.

Itē if a deare, or other wilde beaste that is so sore hurt that hee may be taken, cōmeth into an other mans grounde, whether it be his that owneth the grounde, or his that strake him, Summa rosella, in the title furtū Para. xiij.

Item whether theft be in a litle thing as wel as in a great thing, Summa rosella, in the title furtū Para. xviij.

Itē what paine a thiefe shal haue, Summa rosella in the title furtū Para. xxij.

Itē ỹ if goods of deade men go to the heires, and that of dampned men. s. De terris, Summa rosella in the title hereditas Pa. j.

Itē whether a man shalbe said guilty of murther by cōmaundement, counsaile, or assent, Summa rosolla, in the title homicidiū ij. per totum, & like matter is homicidiū iij, in principio, & diuers other cases.

Itē a mā maketh a priuy cōtract with a woman, & after hath a childe by her, & after marieth an other woman & hath a childe, she not knowing of the first contract, which of the children shalbe his heire: Summa rosella in the title Illegitimus Pa. iij.

Itē whether the Pope may legitimate one to temporal thinges, and to succeede, Summa rosella in the title Illegitimus Pa.

Item if goods be founde that were left of the owner as forsake, who hath right to the. Summa rosella in the title inuēta Para. ij. And for

Sum-

Summa rotella in ỳ title Cartum Pa. xvij. And thus I make an end of these questiõs, & because thou desiredst mee in ỳ xxxj. Chap. to shew thee somwhat where ignorance excuseth in the law of the realme & where not, I will answer somewhat to thy question, & so cõmit thee to God.

## Where ignorance of the law excuseth in the lawes of England, and where not.

### The xlvj. Chapter.

IGnorance in the lawe though it be invincible doth not excuse as to the law but in few cases, for euery mã is wõd at his peril to take knowledge what the law of the realme is, aswel the law made by statut as cõmõ law, but ignorãce of the deede, which may be called the ignorãce of the truth of ỳ deede, may excuse in many cases. D. I put case that a statute penal be made, & it is enacted that the statut shalbe proclaimed before such a day in euery shire & it is not proclaimed before ỳ day, & after ỳ day a mã offendeth against the stat, shal he rũ in ỳ penalty. S. I think yea, if there bee no farther words in ỳ statut to help him, that is to say, that if ỳ proclamation be not made that no man shalbe bõde by the statute, & the cause is this, there is no statut made in this realme, but by the assent of ỳ lordes spiritual, & temporal, & of al the cõmons; that is to say, by ỳ knights of the shire, citizẽs, & burgesses that be chosen by assent of the cõmons, which in ỳ parliamẽt represẽt the estate of the whole cõmons.

And euery ſtatute there made, is of as ſtrong effect in the lawe, as if all the commons were there preſent perſonally at the making thereof, & lyke as there neded no proclamation, if all were there preſent in their owne perſon, ſo the law preſumeth there needeth no proclamation, when it is made by their authority, & then whē it is enacted that it ſhalbe proclaimed, &c. that is but of ꝑ fauour of the makers of the ſtatute, & not of neceſſity, & it cānot therefore bee taken, that their intēt was that it ſhould be voide if it were not proclaimed. Neuertheleſſe ſome bee of opinion that if a man before the day appointed for the proclamation offend ꝑ ſtatute ꝑ hee ſhoulde not in that caſe be puniſhed, for they ſay ꝑ the intēt of the makers of ꝑ ſtatute ſhalbe taken to bee, ꝑ none ſhould bee puniſhed before the day, which is a doubt to ſome other, but admit it be as they ſay, that he ſhalbe excuſed, yet he is not excuſed by the ignorance of the lawe, but becauſe ꝑ intēt of the makers excuſed him. D. It is enacted in the vij. yere of king Ric. the ij. the vj. Chapter, that euery ſhirife ſhal proclaime the ſtatute of Wincheſt. thre times euery yere, in euery market towne, to thintent the offenders ſhal not be excuſed by ignorance, and it ſeemeth by thoſe wordes that if no proclamation be made, that the offendor may be excuſed by ignorāce. S. Some take the intent of that ſtatute to be, that the people by that proclamation ſhould haue knowledge of that ſtatute of Wincheſter, to the intent that the forfaytures therein may be taken alſwell in conſcience as in lawe, and ſome take

the

the statut to be of such effect as thou speakest of that is to say, that no forfayture should growe vpon the statute of Winchester against the that were ignorant but proclamation were made according to the saide statute of Richard. And if it be so taken, þ statute of Winchester is of smal effect against most part of þ people, for certayne it is that the said proclamatiō is not made: but admit it be as they say, then they þ be ignorant be excused by the said particuler statut, specially made in that case & not by the general rules of the lawe, and sometyme in dyuers statutes penalles they that be ignorant be excused by þ selfe statut as it is vpon the statute of Richard the ij. the xiij. yere, the seconde statute and the last Chapiter where it is enacted þ if any person take a benefice by puision þ he shalbe banished the realme and forfait all his goodes, and that if he be in the realme, he auoide within vj. weekes after he hath accepted it, and that none shal receiue him þ is so banished after the sayd vj. weekes vpō like forfeiture if he haue knowledge, & so he that hath no knowledge is excused by the expresse wordes of the statute. And in likewise he þ offendeth against Magna charta is not excomenged but he haue knowledge that it is prohibite þ he doth. For they be only excommenged by þ sentēce called (Significauit latas super cartas) þ doth it wilfully, or that doth it by ignorāce, & correct not himselfe within xl. dayes after they haue warning. And sometime they that be ignorant of a statute be excused frō þ penalty of the statut because it shalbe

taken that the intēt of the makers of the statute was ꝑ none should be bound but they that have knowledge but that any mā shalbe discharged in the lawe by ignorāunce of the lawe onely for that he is ignorāt, I know fewe causes except it might be applied to infants that bee in their infancy & within yeres of discretion, for if ignorance of the lawe should excuse in ꝑ law many offenders would pretende ignorāunce. D. Shal an infant that hath discretiō & knoweth good frō euil be punished by a penal statute ꝑ he is ignorant in: S. If the statute be that for the offence he should haue corporall payne, I thinke he shalbe excused and haue no corporall pain, but I suppose ꝑ that is not for ꝑ ignorāt for though he knew the statute & willingly offended, yet I thinke he shall haue no corporall paine, as where he pleaded iointenancy by dede ꝑ is found against him, or if he plead a record in assise & faileth of it at his day, but ꝑ is because the law presumeth that it was not thintēt of ꝑ makers of the statute that he should haue that punishment, but if he be of yeres of discretiō to knowe good frō euil, whether he shall then forfait ꝑ penaltie of a penal statute it is more doubt for it is cōmonly holden, ꝑ if an infant had not ben excepted in the statut of forcludgement, ꝑ the forcludgement should haue bound him, & so shall his celler, & his keeping of a crosse against the statut, or if he be a gardein of a prisō & suffer a prisoner escape he shal pay ꝑ debt because ꝑ statuts be general, & if he should by the statuts be bound with age like reasō wil ꝑ he may by a stat

penal

penal lese his goods. D. If an infãt wa murder or a felony at such yeares as he hath discretiõ to know the law, shal he not haue ỹ punishment of the lawe as one of full age? S. I think yes, but that is by an old maxime of the law for eschewing of murthers and felonyes, & so it is of a trespas, but these cases rũne not vpon the ground of ignorannce, but with what an infants shalbe punishable or not punishable for the tendernes of their age, though they bee not ignorannt. D. Wee not yet knightes and noble men that are bounde most properly to set their study to acts of chiualry for defence of the realme, & husbandmen that muste vse tillage & husbandry for the sustenance of the cõmunalty, and that may not by reason of their labour put thẽselues to know ỹ law, be discharged by ignorannce of the law? S. No verily, for sith all were makers of the statute, the law presumeth that al haue knowledge of ỹ that they make as it is said before: & as they be bound at their perill to take knowledge of the statute that they make: so be al them that come after them. And as for knightes & other nobles of the realme, me seemeth ỹ they should be bound to take knowelege of ỹ law alwel as any other vnin ỹ realme except thẽ ỹ geue thẽselues to ỹ study & exercise of the law, & except spiritual iudges ỹ in many cases be bound to take knowledge of the lawe of ỹ realme as is said before in ỹ xxv. chap. For though they be bound to acts of chiualry, for defence of ỹ realme, yet they be bounden also to ỹ actes of iustice, and that as it seemeth more then

other be by reaſō of their great poſſeſſions and authority. And for ꝑ wel ordring of ꝑ tenātz, ſeruantz & neighbors, ꝑ many times haue nede of their help, & alſo becauſe they be oft called to be of ꝑ kings counſel, & to the general coūſails of ꝑ realme, where their coūſail is right expedient & neceſſary for ꝑ cōmon welth, & therefore it ꝑ noble mē of this realme would ſe their childrē brought vp in ſuch maner, that they ſhould haue learnīg & knowledge, more thē they haue cōmōly vſed to haue in tyme paſt, ſpecially of ꝑ groūds & principals of the lawe of the realme, wherein they be inherite though they had not ꝑ high cunning of ꝑ whole body of the lawe, but after ſuch maner as Mr. Forteſcue in his booke & he entitleth the booke (de laudibus legum Angliæ) aduertiſeth the prince to haue knowledge of ꝑ lawes of this realme, I ſuppoſe it would be a great helpe hereafter to ꝑ miniſtratiō of iuſtice in this realme, & great ſuerty for themſelf, & a right great gladnes to al the people, for certain it is, the more parts of the people would more gladly heare ꝑ their rulers & gouernors ſtrēued to order thē in wiſedōe & iuſtice, thē in power & great retinues. But ignorance of ꝑ deede many times erculeth in ꝑ lawes of England, & I ſhal ſhortly touche ſome cales thereof to thēwe where it ſhal excuſe, & where it ſhal not excuſe, & then the reader may adde to it after his pleaſure & as he ſhal thinke to be conuenient.

¶ Certaine cales & grounds where ignorance of the deede excuſeth in the lawes of England, and where not.

¶ The

## The xlvij. Chapiter.

If a man buy a house in open market of him ꝑ in right hath no ꝑperty in him, not knowing but that he hath right, he hath good title ẽ right to the house and the ignorance shall excuse him. But if he had bought him out of that opē market, or if he had knowē ꝑ the seller had no right the buying in opē market had not excused him. Also if a man retaine another mans seruāt not knowing ꝑ he is retained w̄ him, the ignorance excuseth him both for the offence that was at ꝑ cōmon law against the maxime that prohibited such retaining of another mās seruāt. And also against the statut of pryn. of Edward ꝑ third, wherby it is ꝓhibited vpō paine of imprisonmēt that none shall retaine no seruāt that departeth within his seruice without licēce & reasonable cause, for it hath been alway taken, that ꝑ intēt of the makers of the said statute was that they that were ignorant of the said retainer should not runne in any penalty of the statut. And the same lawe is of him that retaineth one that is bonde to another, not knowing that he is his bond. Also if homage be due and the tenāt offer that the homage is due maketh a feoffement, after the lord not knowinge of the feoffement affirmeth for the homage, in that case that ignorance shall excuse him of damages in a writ of entre though he cannot sue for the homage, but if he had knowen of the feoffement, he should have yelded damages for the wrongfull taking. Also if a man be bounden in obligation that he

shal

shal repaire the houses of him that he is bound to by such a certain time as oft as nede shal require, & after ỹ houses haue nede to be repaired but he that is bōūd knoweth it not, that ignorance shall not excuse him for he hath bounde hiselfe to it, & so he must take knowledge at hys peril, but if the condition had bene ỹ he shoulde repaire such houses as he to whō he was bōūd should assigne, & after he assigneth certain houses to be repaired, but he that is bound hath no knowledge of that assignement, that ignorance shal excuse him in the law, for he hath not bōūd himself to no reparation in certaine, but to such as the party wil assigne, and if he none assigne, he is bounde to none, & therfore sith he ỹ should make the assignement is privy to the dede, he is bounde to geue notice of his owne assignement, but if the assignement had bene appointed to a straunger then the obligour must haue taken knowledge of the assignement at his peril. Also if a man buy lāds whereūto another hath tyth which the buyer knoweth not, ỹ ignorance excuseth him not in the law no more then it doth of goods. Also if a seruant come with his maisters horse to a towne ỹ by custome may attach goods for debt, & vpon a plaint against the seruant, an officer of the towne, by informations the party attacheth the maisters horse thinking that it were the seruants horse, that ignorance excuseth him not, for when a man will do an acte as to enter into lande, seyse goodes, take a distresse or such other, he must by the lawe at his peril: for that that he doeth de facto lawfully

don

done as in ỹ case before rehearsed. And in likewise if a sherif by a replevi deliuer other beasts thē were distrained, though the party that distrained shewed him they were the same beasts yet an actiō of trespas lieth against him, & ignorance shal not excuse him, for he shalbe cōpelled by the law as al officers cōmonly be, to execute the kings writ at his peril according to the tenour of it, & to se that the act that hee doth bee lawfully don. But otherwise it is after soe mē if vpon a sūmons in a Precipe quod reddat the sherife by informatiō of the demaūdant sūmoneth the tenant in another mās lāds, thinking it for the tenants land, there they say he shalbee excused, for in that case he doth not seise ỹ land ne take possession in the land, but only doth somon the tenāt vpon ỹ land, & the writ cōmaūdeth him not that he shal somon the tenāt vpon his owne lād, but generally that he shal somon him, and knoweth not inwhat land and thē by an old maxime in the law it is taken ỹ he shall sūmon him vpon the land in demaund, & therefore though hee mistake the land & be ignorant of it, yet if the demaundaunt enforme him that that is the lād that he demaūdeth that sufficeth to the sherife as to his entre for the sūmoning as they say, though it be not ỹ tenāts. And here I make an end of these questions for this time

D. I pray thee yet or we depart take a little more paine at my desire.

S. What is that. D. That thou wouldest shew me thy minde in diuers cases of ỹ lawe of realme which as me semeth shūd not so clerely

with

with cõscience as they should do. And therfore I would gladly heare thy conceipt therin how they may stande with conscience. D. Put the cases & I shall with good will say as I think to them.

## ¶ Addition.

¶ The first question of the Doctour, How the lawe of England may be said reasonable ꝙ prohibiteth them ꝙ be arraigned vpõ an enditmẽt of felony or murther to haue counsaile.

## ¶ The xlviij. Chapter.

M Ethinketh that the lawe in that poynt is very good and indifferent, takinge the lawe therein as it is, D. why, what is the lawe in this point? S. The lawe is as thou saiest, that he shal haue no counsaile, but then the lawe is further, that in all thinges that pertaine to the order of pleadinge, the Iudges shall so instruct him and so order him that he shal renne into no ieopardy by his mispleading, as if he will plead that he neuer knewe the man that was slayne or that he neuer had a peny worth of the goods ꝙ is supposed that he should steale, in these cases ꝙ iudges are bound in conscience to enforce him that he must take the generall issue & plead ꝙ he is not guilty, for thaugh they be set to be indifferent betweene the king & the party as to the party, & to the principal matter as they be

in

in al other matters, yet they bee set in this case
lest ꝑ the party take no hurt, in feyme of plea-
ding in such matters, as he shal shewe to be the
truth of the matter, & that is a great fauoure of
the lawe, for in appealle, though the Justices of
ney will most comenly helpe forth the party,
and sometime his counsaile also in the feyme of
pleading, as they doe also many times in cõmon
pleas, yet they might i those cases if they would
aid the party, & his cõsaile plede at their peril.
But they may not doe so with conscience vpon
indictmentes as me seemeth: for it were a great
vnreasonablenes in ꝑ lawe, if it should prohibite
him that standeth in ieoperdy of his lyfe that
he should haue no counsaile, & then to driue him
to plede after the straite rules, formalities of ꝑ
lawe that he knoweth not. ❧ But what if hee
be knowē for a cõmen offender, or ꝑ the iudges
know by examination, or by an euident presup-
tion ꝑ he is guilty, & he alleth sanctuary, or ple-
deth nihilnouit, or hath some record to plede, ꝑ
he cannot plede after the fourme; May not the
Iudges in such cases bid him plede at his peril?
❧ I suppose that they may not, for though he
be a common offender, or that he be guilty, yet hee
ought to haue that ꝑ lawe giueth him, and that
he shal haue the effect of his pleas, and of hys
matters entred after the fourme of the lawe, and
also sometime a man by examination, & by wit-
nes may appere guilty that is not. And in like-
wise there may be a vehement suspition that he
is guilty, & yet he is not guilty, & therefore for
only suspitions, or vehement presumptions me
thinketh

thinketh a mā may not w̄ cōscience be put frō
he ought to haue by ꝑ lawe, ne yet although the
iudges knew it of their owen knowledge: but
it were in appele I suppose, ꝑ the Iudges migh
do therein as they should think best to be done
cōscience, for there is no law ꝑ bindeth thē to
struct him, but as thei do commonly the par
of fauour in al other cases, but they may
wil byd them pleade at their peril by aduise
their counsaile, & if the appellee bee poore, & ha
no counsaile, the court must assigne him cōse
if he aske it, as thei must do in al other places,
ꝑ me thinketh they are bounde to we in cōsci
ence though ꝑ apelee were neuer so great an o
fender, and though the Iudges knewe neuer
certainly ꝑ he were guilty, for the lawe binde
thē to do it. And so me thinketh ꝑ there is gr
diuersity betwene an indictmt & an appele. A
the reason why the law prohibiteth not cō
in appele as it doth in an indictment, I suppo
is this. There is no appele brought, but that
common presumption the appellant hath gr
malice against the apelee. And when ꝑ appe
is brought by ꝑ wife of the deth of her husb
or by the sone of the death of his father, or th
an appele of robbery is brought for stealing
goods. And therfore if ꝑ Iudges should in th
cases shew thēselues to instruct the apelees
appellants would grutch and thinke them pa
tial, and therefore as wel for the indempnit
the court, as of the apelee in case that he be
guilty, the law suffreth ꝑ apelee to haue co
but when that a man is indicted at the Kings
suit

suite, ꝑ king intēdeth nothing but iustice with fauor, & ꝑ is to the rest & quietnes of his faithful subiects, & to pul away misdoers amōg them charitably, & therefore he wil be cōtented ꝑ his iustices shal help forth ꝑ offenders according to the truth, as far as reason & iustice may suffer. And as the king wil be cōtēted therein: it is to presume ꝑ the counsel wil be contented. And so there is no daunger therby, neither to the court ne to the party, & as I suppose for this reasō it began ꝑ they shoulde haue no counsayle vppon indictments, & that hath so long continued that it is now growen into a custome, & into a maxime of ꝑ law, that they shal none haue. D. But if the Iudges knew of their owne knowledge that ꝑ indictee is guilty, & then he pleadeth misnomer or a recorde that he was auterfoits arreigned, & acquite of ꝑ same murther, or felony, & the iudges of their owne knowledge know ꝑ the plee is vntrue, may they not then bidde him plede at his peril? S. I think yes, but if they know of their owen knowledge ꝑ he were guilty of the murther or felony, but that the plee was vntrue thei knew not but by cōiecture or information, I thinke they might not then bid him plede at his peril.

¶ The second question of the Doctor whether warranty of the yonger brother, that is taken as heire, because it is not knowen but that the eldest brother is deade, be in consistence a bar vnto the elder brother, as it is in the lawe.

## The xlix. Chapter.

A Man seised of lāds in fee hath issue .ij. sōnes, the eldest sonne goeth beyond the sea, & because a common voice is that he is dead, ỹ younger brother is takē for heire, the father dyeth, ỹ younger brother entreth as heire, & alieneth the lande with a warranty, and dieth without any heire of his body, & after ỹ elder brother cōmeth againe, & claimeth ỹ land as heire to his father, whether shal he bee barred by that warranty in conscience as he is in the lawe?

S. It is a maxime in the lawe, that the eldest brother shal in ỹ case be barred. And that maxime is taken to be of as strong effect in the lawe, as if it were ordeined by statute to be a barre. And it is as olde a lawe ỹ such a warranty shal barre the heire: as it is that the inheritance of the father shal only discend to the eldest sonne. And sith the lawe so is, why should not the conscience follow the lawe, as wel as it doth in this point, that the eldest sonne shal haue the lande.

D. For there appeareth no reasonable cause whereupon ỹ maxime might haue a lawful beginning, for what reason is it that the warranty of an auncester that hath no right to lande, shoulde barre him that hath right. And if it were ordayned by statute, that one man should haue an other mans lande, & no cause is expressed why he shoulde haue it, in that case though he might hold the lande by force of that statute, yet he could not hold it in cōscience, wout then

sum

were a cause why he should haue it, & these cases be not like as me seemeth to the forfaiture of goods by an outlawry, for I will agree for this time, that that forfaiture standeth with conscience, because it is ordained for ministration of [illegible], but I cannot yeelde any such cause heare: [illegible] me thinketh that this case is like [illegible] the maxime, that was at the common law of wracke of the sea, that is to say, that if a mannes goods had beene wrecked vppon the sea, that y goods should haue beene immediately forfeited to the kinge. And it is holden by al Doctours that that lawe is against conscience, except certaine cases y were to longe to rehearse nowe. And it was ordeined by y statute at Westminster y first, that if a Dogge, or Catte come aliue to the lande, that the owner if he proue y goods within a yere and a day to be his, shal haue the, whereby the said lawe of wreckes of the sea, is made more sufferable then it was before, & some thinke in this case that this warranty is no barre in conscience, though it be a barre in the lawe. Ed. I pray the kepe that case of wracke of the sea in thy remembraunce, and put it hereafter, as one of thy questions, & thereupon shewe me thy farther minde therein, and I shal with god wil shew the my minde, & as to this case y is not be in nowe, me thinketh the maxime whereby the warranty shalbe a barre, is good & reasonable, for it semeth not against reason that a man shalbe bounde, as to temporall thinges, by the acte of his auncestor to whome hee is heire, for like as by the lawe it is ordayned, that hee that

haue aduantage by the same auncestor, and haue al his landes by discent if he haue any right, so it semeth that it is not vnreasonable, though the law for ỹ vnitie of blond that is betwene the sutter him to haue a disaduauntage by the same auncestor, but if the maxime were ỹ if any of his auncestors, though her were not heire to him made such a warranty, that it should be a barre. I thinke that maxime were against conscience, for in that case there were no grouñd, nor cõsideration to proue howe the saide maxime should haue a lawful beginning, wherefore it were to be taken as a maxime against the law of reason, but me thinketh it is otherwise in this case, for the reason that I haue made before. D. If the father binde him and his heires to the paiment of a debt and dye, in that case the sonne shal not be bounde to pay the debt, vnles he haue assets by discent from his father. And so I would agree, that if this man haue assets by discent fro the auncestor that made the warranty: that he should haue bene barred, but els me thinketh it should stand hardly with cõscience, ỹ it should be a barre. S. In that case of the obligation, the law is as thou saiest, and ỹ cause is for this the maxime of the law in that case is none other, but that he shalbe charged if he haue assets by discent; but if the maxime had bene generall that the heire should be bounden in that case without any assets, or if it were ordeined by statute that it should be so, I thinke that both the maxime and the statute should well stande with conscience. And ỹ is where a man

is vouched as heire, hee may enter as hee y hath nothing by discent, but where hee claimeth the land in his owne right, there the warranty of the auncester shalbe a bar to him, though he haue assets from y same auncester, & though it bee [illegible] Ezechiel the xviij. Chapter. That the [illegible] shal not beare the wickednes of the father that is vnderstand spiritually. But as to temporal goods the opinio of Doctours is, that the sonne sometime may beare the offence of his father. D. now y I haue heard thy mind an this case, I will take aduisement therein till a better leasure. And wil nowe proceede to an other question. S. I pray thee doe as thou saiest, & I shal with god wil make answere thereto as wel as I can.

¶ The third question of the Doctour, if a man picture a collateral warranty, to extinct a right that he knoweth an other man hath to land whether it be a barre in conscience as it is in the law or not.

## ¶ The I. Chapter.

A Man is disseised of entraine lande, the disseisour selleth yland to y disseisee knowing of y disseisin, obtaineth a release w^th warranty of an auncester collateral to y disseisee knowen also the right of the disseisy. That auncester collateral dieth, after whose death the warranty descendeth vppon the disseisy, whether may the disseisee in that case holde the lande in conscience

ence as he may by the law. ℣. Sith the warranty is discended vpon him, whereby he is barred in the law, me thinketh that he shal also be barred in cõscience, & þ this case is like to the case in the next chapter before, wherein I have said that as me thinketh it is a barre in [illegible]

W. Though it might be taken for a barre in cõscience in that case, yet me thinketh in this case it cannot, for in that case the yõger brother entred as heire, knowing none other but that he was heire of right, & after when he sold þ lande the buyer knew not but that he that sold it had good right to sel it, and so he was ignorant of the title of the eldest brother, and that ignorance came by þ default and absence of himselfe, that was the eldest brother. But in this case as wel the buier, as he that made þ collateral warranty, knew the right of the disseisee, & did that they coulde to extinct the ryght, and so they did & they would not should haue bene don to the, & so it semeth that he that hath the land may not with conscience keepe it.

℣. Though it be as thou saiest þ al they offended in obtaining of the said collateral warranty, yet such offence is not to be considered in the law, but it be in very special cases, for if such allegians should be accepted in the law, releases, and other writings should bee of small effect, & vpon euery light surmise, al writinges might come in trial whether they were made with conscience or not, & therefore to auoide that inconuenience, the law wil driue the party to aunswere onely whether it be his deede or not, and not

not whether the deede were made wᵗ conscience
or against conscience, & though the party maye
haue a mischiefe therby, yet the law will rather
suffer the mischief then the said inconuenience.
And like lawe is it, a woman couert for dread of
her husbande by compulsion of him leuy a fine,
... after her husbandes death shall
... committed to shew the matter in auoiding
... fine for thinconuenience y might follow ther-
...wise. And after the opinion of many men, there
is no remedy in theise cases in the Chauncery,
for they say y where y comon lawe in cases con-
cerning inheritãce putteth the party frõ any a-
uerment for eschewing of an inconuenience that
might follow of it amog the people, that if the
same inconuenience should follow in the Chan-
cery if the same matter should be pleaded there,
that no sub pena should lye in such cases, & so it
is in y cases before rehearsed, For almuch ver-
sation, delay, costes, & expenses might growe to
the party if he should be put to answere to such
auerments in y chauncery, as if he were put to
answere to them at the common lawe, & there-
fore they thinke that no sub pena lieth in the
same cases ne in other like vnto them. Neuer-
theles I do not take it y their opinion is that
he that bought the land in this case may with
good conscience holde the land, because he shall
not be repelled by no lawe to reteyne it, but that
he is in conscience and by the lawe of reason
bounde to restore it, or otherwyse to recom-
pence the partie, so as he shall be contented, &
I suppose verelye it is so if he will knowe his

duty. some

soule out of perill and daunger. And after some men to theis cases may be resembled the case of a fine with none claime that is remembred before in the xiij. Chapter of this booke, where a man knowing another to haue right to certaine lā causeth a fine to be leuied therof with [illegible] tion and the other suffereth fine [illegible] without claime, in that case he hath no [illegible] neither by common lawe, nor by sub pena, [illegible] that yet he y leuied the fine, is bound to restore y land in conscience. And me thinketh I could right wel agree that it should be so in this case, & that specially, because y pty himself knoweth perfectly that the said collateralL warraty was obteined by couin and against conscience.

¶ The fourth question of the Workeman is of wrecke of the Sea.

¶ The 15. Chapiter.

I Pray thee let me now heare thy minde how the lawe of Englande concerning goodes that be wrecked vpon the sea may stande with conscience, for I am in great doubt of it. D. I pray thee let me first heare thine opinion what thou thinkest therein. S. The statute of Westminster the first that speaketh of Wrecke is, if any man, dogge or catte, come aline into y land out of the ship or barge, that it shall not be taken for wrecke, so that if the partie to whom the goodes belonge come within a yere & a day and proue them to be his, that he shall haue them, & els that they shal remaine to the kinge. And me thinketh that the olde statute standeth not

with

with conscience, for there is no lawfull cause why the party ought to forfait his goodes ne þ the king or lordes ought to haue thē, for there is no cause of forfeiture in the party, but rather cause of losse & hindrance. And so þ lawe is [illegible] to adde sorow vpon sorow. And therefore [illegible] holde commonly that he that hath [illegible] is bound to restitucion, and that no [illegible] may helpe, for they say it is against the commaundement of God, Leui. xix. where it is commaunded that a man should loue his neighbour as himselfe, and that they say he doeth not, that taketh away his neyghbours goodes, but they agree that if any man haue cost and labour for the sauing of suche goodes wrecked, specially for such goodes as would perish if they lay still in the water, as Sugar, Payper, Salt, Whale, or such other, that he ought to be allowed for his costes and labour, but he must restore the goodes except he could not saue them without putting his life in ieopardy for them, and then if he put his life in such ieopardy and the owner by common presumption had had no way to haue saued them, then is it most commonly holden that he may keepe the goodes in conscience, but of other goodes that would not so lightly perish, but that the owner might of common presumption saue them himself, or that might be saued without any peril of life, the takers of them be bounde to restitution to the owner, whether he come within the yere or after the yere.

And me thinketh this case is somewhat like vnto that I shall put, if there were a lawe

and a cuſtome in this realme or if it were ordey-
ned by ſtatute, that if any alien came through y
realme in pilgrimage & died, that all his goodes
ſhould be forfeit, that lawe ſhould be againſt cõ-
ſcience, for there is no cauſe reaſonable why the
ſayd goodes ſhoulde be forfeyte. And no mar-
uayle thinketh there is of wrecke. &
in diuers caſes where a man hath [illegible]
and no default in him, as where beaſtes
away frõ a man and they be taken vp and pro-
claimed and the owner hath not heard of them
within the yere and the day, though he make
ſufficient diligence to haue heard of them, yet
goods be forfeit and no default in him, and ſo it
is where a mã killeth another with the chaũce
of I. as ſtatute, y woode ſhalbe forfait as afore-
ſayd, & yet no default is in the owner, & ſo may
thinketh it may be in this caſe, and that ſith the
common lawe before the ſaid ſtatute was that y
goods wrecked vpon the ſea ſhall be forfait to
the king that they be alſo forfait now after the
ſtatute, except they be ſaued by following y ſta-
tute, for the lawe muſt nedes reduce y properti
of all goodes to ſome man, & when the goodes
be wrecked it ſeemeth y property is in no man,
but admitte that the propertie remaine ſtill in
the owner, then if the owner percaſe would ne-
uer claime, then it ſhould not be knowen who
ought to take them: and ſo might they be dy-
troyed and no profite come of them, wherefore
me thinketh it reaſonable that the lawe ſhal ap-
point who ought to haue them, & that hath the
lawe appointed to y king as ſouereigne & head

ouer

ouer the people. D. In the cases that thou hast put before of the straye and treodand, there be considerations why they be forfeit, but it is not so here, and me thinketh that in this case it were not unreasonable that a law should suffer any man that should take the to take a beast to the vse of the owner, saying his reasonable expenses, and this me thinketh were more reasonable law then to put the property out of the owner without cause. But if a man in the sea cast his goods out of the shippe as forsaken, there doctours holde that every man may take them lawfully that will, but of herwote it is as they say if he throw the out for feare that they should ouercharge the ship.

S. There is no such lawe in this realme of goodes forsaken, for though a man wrongfully dispossessed of his goodes and saith her forsaketh them, yet by the lawe of the realme the ppertie remayneth stil in him, and he may seyle them after when he will, and if any man in the meane time put the goodes in safe garde for the vse of the owner, I thinke he doth lawfully, and that he shall be allowed for his reasonable expenses in that behalfe, as he shall be of goodes founde, but he shall haue no interest in them no more then in goodes founde. Also I wonder where that if a man perish by chaunce and be dead, any goodes within this realme that he should haue, them as his owne, that the prelate may seize holde, for there is no consideration why a prelate more then any other man should haue them.

D.

D. It is this, The kinge by the olde customs of the realme, as lord of ꝑ narrowe sea, is bound as it is laid to scoure the sea of the pirats & petit robbers of the sea. And so it is read of ꝑ noble king saint Edgare: that he would twise in the yere scoure the sea of such pirates, but I meane not therby that the king is bound to set out his marchats upon the sea against al outwarde enemies, but that he is bounde onely to cast away such pirates and petit robbers. And because ꝑ cannot be done without great charge, it is not unreasonable if he haue suche goodes as be wrecked upon the sea toward the charge. D. Upon that reason I will take a respite til another time.

C. The .v. question of the Doctour whether it stand with conscience to prohibite a Jury meate and drinke til they be agreed.

C. The lij. Chapter.

IF one of the xij. men of an enquest knowe the very trouth of his owne knowledge, and instantly his felowes therof, & they will in no wise geue credence to him, & therupon because meate & drinke is prohibited them, he is driuen to ꝑ point, that ey̓ther he must assent to them, and geue their verdict against his owne knowledge, and against his owne conscience, or ꝑ for lacke of meate, how may the lawe the standeth with conscience that will driue an innocent to ꝑ execution, to be either famished, or to be stifled and die for lacke of meate. D. I take it the lawe of ꝑ realme to be ꝑ Jury after they

be

be sworne may not eate nor drinke till they be agreed of the verdict, but trouth it is there is a maxime, and an olde custome in the lawe, that they shall not eate nor drinke after they be sworne till they haue geuen their verdict with out the assent and licence of the Justice, wch is ordained by the lawe for eschewing of dyuers inconueniences that might follow thereupon, & that spectally if they should eat or drinke at the costes of the parties, & therefore if they do the contrary, it may be layed in a reles of the iudgement, but with the assent of the Justices, they may both eate and drinke, as if any of the Iurours fall sicke before they be agreed vpon their verdict so fore that he may not comon of y verdict, thē by the assent of y Justices he may haue meate and drinke and also such other things as be necessarye for him and his fellowes, also at their owne costes, or at the indifferent costes of the parties if they so agree, or by the assent of the Iustices may both eat and drinke, and therefore if the cause happen that thou nowe speakest of, & that the Iury can in no wise agree in their verdict, & that appeareth to the Justices by examinatyon: the Iustices may in that case Iustify them haue bothe meate and drinke for a tyme to see whether they will agree, and if they will in no wise agree: I thinke y the Justices may set such order in y matter as shall seeme vnto them by their discretiō to stād in trouble & conscience by awarding of a new enquest by setting fines vpō the that they shal finde in default, as otherwise as they shal thinke best by their discretion like

as

as they may do if one of the iury die before verdict, or if any other like casualties fal in that behalf. But what the iustices ought to do in this case that thou hast put by their discretion: I will not treate of at this time.

¶ The vj. question of the doctour whether the colours that be geuen at the cõmon law in assises, actions of trespas, and diuers other actions stand with cõscience because they be moste cõmõly feined and be not true.

¶ The liij. chapiter.

I Pray thee let me heare thy minde to what intent such colours be geuen, & sith they be commonly untrue: howe they may stande with conscience &c. The cause why suche colours be geuen is this, there is a maxime & a grounde of the lawe of Englande, that if the defendaunt or tenaunt in any action pleade a plee that amounteth to y generall issue that he shalbe cõpelled to take the generall issue, and if he will not, he shall be condemned for lacke of answere, & the generall issue in assise is, that he that is named by the assise hath done no wrong nor no disseisin. And in a writ of entre in the nature of assise y generall issue is that he disseysed him not, and in an action of trespas that he is not guilty, & so euery action hath his generall issue allygned by the lawe, and the tenaunt must of necessitie either take y generall issue, or plede some plee in abatement of the writ to the iurisdiction, to y person or by the some barre or some matter by way of conclusion. And therfore if J. at Stile intende

Henry

Henry Hart of land, and a stráger bringeth an assise against the said Henry Hart, for that land whose title he knoweth not. In this case, if he should be compelled to plede to the point of the assise, that is to say, that he hath done no wrong nor disseisen, the matter shoulde be put in the determinacion of xij. lay men, which be not learned in the law, and therefore better it is that the law be so ordered, that it be put in the determinatiō of the Iudges, then of lay menne. And if the syde Henry Hart in the case before rehearled, would plede in barre of the assise that John at Style was seised & enfeffed him, by force where of he entred and asked iudgement, if that assise should lie against him, that plee were not good, for it amounteth but to ỹ general issue, & therefore he shalbe compelled to take ỹ general issue, or els the assise shalbee warded against him for lacke of answere. And therefore to the intent the matter may be shewed and pleded before the Iudges, rather thē before ỹ Iury, the tenants vse to geue the plaintife a colour, that is to say, a colour of action whereby it shal appere that it were hurtful to the tenant to put that matter that he pleadeth to the iudgement of xij. men, and the most common colours that is vsed in such case is this, whē he hath pleded that such a man enfeffed him, as before appereth, it is vsed that he shall plede further, and say that the plaintife claiming by a colour of a deede of feffement made by the said feoffour, before the feoffement made to him, whereupon right passed by ỹ deede, entred, upon whom he entred, and asked iudgement if

the

the allyle lie against him. In this cale because it appereth to bee a doubt to vnlearned men whether the land paſſe by the deede without ſuuery or not, therefore the law ſuffereth the tenant to haue that ſpeciall matter to bring the matter to the determination of the Iudges. And in ſuch cale the Iudges may not put the tenant to plee, for they knew not as Iudges, but that it is true, and ſo if any default be, it is in ỹ tenant and not in the court. And though the truth be that there were no ſuch deede of feffement made to the plaintife as the tenaunt pleadeth, yet me thinketh there is no default in the tenãt, for he doth it to a good intent as before appeareth. ℣. If the tenant knowe ỹ the feoffour made no ſuch deede of feffemẽt to the plaintife, thẽ there is a default in the tenaũt to plede it, for he wittingly layeth agaynſt the trouth, and it is holden by all doctours that euerye lye is an offence more or leſſe, for if it be of malice, & to the hurt of his neighbour, then it is called (Mendacium pernitioſum) and that is deadlye ſinne. And if it bee in ſporte, and to the hurt of no man, nor of cuſtome vſed, ne of pleaſure that he hath in lying, then it is veniall ſinne, and is called in ſinne, (mendacium iocoſum.) And if it be to the profite of his neyghbor and to the hurt of no man, then it is alſo venial ſinne, and is called in ſinne, (mendacium officioſum.) And though it be the leaſt of thoſe thræe, yet it is a veneal ſinne and wouldbe bee eſchewed. ℣. Though the midwiues of Egipt lyed when they had reſerued the male children of ỹ Ebrewes, layenge to

king Pharao, that the Hebrewes had women, that were cunninge in the same crafte, which or they came had reserued the chyldren alyue, where in dede they thesselues of pity & of dreade of god reserued them, yet sainct Hierome expounedeth the text following, which saith your god therefore gaue them houses, that is to vnderstande, that he gaue them spiritual houses and that they had therefore eternal reward, & if they sinned by that lie, although it were but venial, yet I cannot see how they shoulde haue therefore eternal reward. And also if a man intending to slea an other, aske me wher that man is, is it not better for me to lye and say I cannot tel where he is, though I knowe it, then to shew where he is, whereuppon murther should followe? D. The dede that the midwyues of Egypte did in sauinge the chyldren, was meritorious, and deserued reward euerlastinge (if they beleued in god) & did good dedes beside, as this to suppose they did, when they for the loue of GOD, refused the death of the innocentes, and then though they made a lye after, which was but veneal sinne, that couldo not take from them their reward, for a veneal sinne doth not vtterly extinct charity, but letteth the fauour thereof, and therefore it may well standde with the wordes of sainct Hierome, that they had for their good dede eternal houses, and yet the lye that they made to be a venial sinne, but neuertheles if such a lie of it self but venial, be affirmed in an oth, it is alway mortal if he knowe it be false that he sweareth. And as to thother

que=

quelsion it is not like to this quelsion, that we
haue in hand as me seemeth, for sometime a man
for eschewinge of the greater euill may doe a
lesse euill, and then the lesse is no offence in him,
& so it is in the case that thou hast put, wherein
because it is lesse offence to say he wotteth not
where he is, though he knowe where he is, than
it is to shewe where he is. whereupon murther
shoulde followe, it is therefore no sinne to say he
wotteth not where he is, for euery man is bound
to loue hys neighbour, and if he shewe in this
case where he is, knowing his death should fo-
lowe thereupon, it semeth that he loued him not;
ne that her did not to him as he would her done
to, but in the case that we be in here, there is no
such sinne eschewed, for though the party plea-
deth the generall issue, the Jury might finde the
truth in euery thinge, and therefore in that he
saith that the plaintife claiming in by y coloure
of a deed of feoffement, where nought passed ex-
tred &c. knowing that there was no such feof-
ment, it was a lie in him, and a deadly sinne as
me thinketh. And euery man is bounde to saue
a deadely sinne in his neighbour, rather than a
venial sinne in himselfe.

S. Though the Jury vppon a generall issue,
may finde the truth as thou sayest, yet it is
much more daungerous to the Jury to enquire
of many poits then to enquire only of one point.
And forasmuch as our lord hath generally com-
maunded to euery man vppon his neighbour,
therefore euery man is bounden to shewe much
as in him is y by him no occasion be taken therto his

neigh-

neighbour. And for ꝑ ſame cauſe, the lawe hath ordeined diuers maximes & principles, whereby iſſues in the kings court may be ioined vpon one point in certaine as nigh as may bee, & not generally, leaſt offece might folow therupon againſt god, & a hurt alſo vnto ꝑ Jury, wherfore it ſemeth that he loueth not his neyghbour as himſelfe, ne that hee doth not as he ſhoulde bee don to, ꝑ offereth ſuch daunger to his neighbor, where he may wel & cõueniently keepe it from him, if he wil folow the order of the lawe, & it ſemeth that he putteth himſelfe wilfully in ieopardy that doth it, & it is written Eccle. iij. Qui amat periculum, in illo peribit, that is to ſay, hee that loueth peril, ſhal periſh in it, & hee that putteth his neighbour in peril to offēd, putteth himſelfe in the ſame, and ſo ſhould he do me ſemeth that would wilfully take the general iſſue, where he might cõueniently haue the ſpecial matter, and furthermore it is none offece in princes and rulers to ſuffer contracts, & buying and ſelling in markets, & faires, though both piury & deſceipt wil folow therupon, becauſe ſuch contracts be neceſſary for the cõmõ welth, ſo it ſemeth likewiſe, that there is no default in the party ꝑ pleadeth ſuch a ſpecial matt to auoide fro his neighbour the daunger of periury, ne yet in the court though they induce him to it, as they do sõtime for the intent before rehearled, and in likewiſe ſome wyll ſay that if rulers of cities and tõmunalties, ſomtime for ꝑ puniſhmẽt of felons, murtherers, & ſuch other offenders wil (to the intẽt they would haue them to cõfeſſe ꝑ truth)

say to them that be suspected, ỹ thei be informed of such certaine defaultes, or misdemeanors in the offendors, & that they do to ỹ intent to haue them to confesse the truthe, that though they were not so informed, that yet it is no offence to say they were so informed, because they do it for the cõmon welth, for if offendors were suffered to goe vnpunished, the cõmon welth would sone decay and vtterly perish.

D. I wil take aduisement vppon thy reason in this matt til another season, & I wil now aske thee another question somwhat like vnto this, I pray thee let me heare thy minde therein. S. Let mee heare thy question & I shal with good will say as I thinke therein.

## ¶ Additions.

¶ The vij. question of the Doctor concerneth the pleading in assise, whereby the tenants vse somtime to plede in such maner that they shall confesse no ouster.

## The liiij. Chapter.

IT is cõmonly vsed as I haue hearde say that when ỹ tenant in assise pleadeth that a stranger was seised and enfeoffed him, & geueth the plaintif a colour in such maner as before appereth in the xlviij. Chapter, that ỹ tenant many times when he hath pleded thus, and the plaintife claiming by a colour of a deede of feoffemẽt

made by the said straūger, where nought passed by the dede entred, & that then they vse to say further, vpon whom A.B. entred, vpon whom the tenant entred, where in dede the said A.B. neuer entred, ne happely ther was neuer no such man: how cā this pleding be excused of an vntruth, & what reasonable cause can ye why such a pleading should be suffered against the truth. S. The cause why that maner of pleadinge is suffred is this. If ꝑ tenant by his pleading cōfessed an immediate entry vpon the pleintife, or an immediate putting out of ꝑ pleintife, which in frēch is called an ouster, thē if the title were after found for ꝑ plaintife: the tenāt by his confession were attainted of the disseyson. And because it may be, ꝑ though the plaintife haue good title to ꝑ land, that yet the tenāt is no disseisor. Therefore ꝑ tenāts vse many times to plede in such maner as thou hast said before, to saue thēselues frō cōfessig of an ouster, & so if there be any default, it is not in the court, ne in the lawe, for thei know not the truth therein til it be tried, & me thinketh also that there is in this case right little default or none in ꝑ tenāt nor in his cōsel, specially if the cōsaile know that ꝑ tenāt is no disseisor. But as to that point I pray thee that thou as thou hast taken a respite to be aduised, or that thou shew thy full minde in the question of a colour geuen in assise, wherof mētion is made in the saide xlviij. Chapter: that I likewise may haue a like respite in this case till an other time, to be aduised, & then I shal with good will shew thee my full minde therein.

D. I am contēt it bee as thou ſaiſt, but I praye thee that I may yet adde an other queſtiō to the .ij. queſtiōs before reherſed of the colours in aſiſe & feele thy mīde therein, becauſe ꝑ ſoūndeth much to the ſame effect that the other doe (that is to ſay) to proue that there be diuers thinges ſuffred in the lawe to be pleaded that bee againſt the truth, & I pray thee let me hereafter knowe thy minde in al three queſtions, and thou ſhalt then with a good wil knowe mine. S. I pray thee ſhew me ꝑ caſe ꝑ thou ſpeakeſt of. D. If a man ſteale an horſe ſecretly in the night. It is vſed ꝑ thereupō he ſhalbe indicted at the kinges ſuite, and it is vſed that in that indictement it ſhalbee ſuppoſed that hee ſuch a day, and place with force, and armes (that is to ſay) wyth ſtaues, ſwords, and kniues, &c. feloniouſly ſtole the horſe againſt the kinges peace, & that forme muſt be kept in euery indictmēt, though ꝑ felon had neither ſword nor other weapon with him but that he came ſecretly wout weapon. Howe can it therefore be excuſed, but that therein is an vntruth. S. It is not alleadged in the indictment by matter in deede that hee had ſuch weapon, for the forme of an indictment is thys, *Inquiratur pro domino Rege, ſi A. tali die & Anno apud talem locum vi & armis videlicet gladiis &c. talem equam talis hominis felonice cepit &c.*

And then the twelue men bee onely charged with the effect of the bill, That is to ſay, whether he be guilty of ꝑ felony or not, & not whether hee be guilty vnder ſuch maner and forme as the bil ſpecifieth or not, & ſo when they ſay (*billa ve-*

(billa vera) they say true as they take the effect of the bil to be. And therfore if there were false latin in the bil of indictment, & the Jury saieth (billa vera) yet their verdict is true, for their verdict stretcheth not to the trouth or falshed of ꝑ latin, but to ꝑ felony, ne to the forme of the wordes, but to the effect of the matter, & that is to inquire whether there were any such felony done by the parson or not, & though the bil vary frō the day, frō the yere, & also from the place where ꝑ felony was done in, so it vary not frō the shire that the felony was done in.

And the iury saith (billa vera) they haue genē a true verdict, for they are bound by their othe to geue their verdict according to ꝑ effect of the bil & not according to the forme of the bill. And so is he that maketh a bowe, bound likewise to ꝑ that by the law is the effect of his auow, & not ōly to ꝑ wordes of his auow. And if a mā auow neuer to eate white meat, yet in time of extreme necessity he may eat white meat, rather thē die & not breake his auow, though hee affirmed it with an othe, for by the effecte of his auow, extreme necessitye was excepted, though it were not expressely excepted in ꝑ wordes of ꝑ auow, & so likewise though the wordes of the bil bee to enquire whether such a man such a day & yeare & in such a place did such a felony, yet the effect of the bil is to enquire whether he did the felony within the shire, or no, & therfore the Justices before whom such indictmēts be taken, most cōmonly enforme the iury that they are bound to regarde the effect of the bil & not the fourme.

And therfore there is no vntrouth in this case neyther in him that made the bil, ne yet in the Iury as me semeth. D. But if the party that ought the horse bring an action of tresp̃as, and declareth ỹ the defendaunt toke the horse with force and armes, were he toke him wout force and armes, howe may the plaintife there be excused of an vntrouth.

S. And if the playntife surmit an vntrouth, what is ỹ to the court or to ỹ law, for thei muste beleue the plaintife, til ỹ that he saith be denied by the defendant. And yet as this case is, there is no vntrouth in ỹ pleintife to say he toke the horse with force and armes, though he came neuer so secretly and without weapon, for euery tresp̃as is in the law done w̃ force & armes, so that if hee be attainted and found guilty of the tresp̃as, he is attainted of the force and armes: And sith the law adiudged euery tresp̃as to be done w̃ force, therefore the plaintife saith truly that he toke him w̃ force as the lawe meaneth to be force. For though he toke ỹ horse as a felon, yet vp̃o the felonious taking ỹ owner may take an action of tresp̃as if hee will, for euery felony is a tresp̃as and more. And so I haue shewed thee some part of my minde to proone ỹ in those cases there is no vntrouth, neither in ỹ parties, neither in the iury, nor in the law. Neuertheless, at a better leasure I wil shew thee my minde more fully therein with good wil as thou hast promised me to do in the cases of the colours of the assise, and of the ouster, that be before rehearsed.

The

## ¶ The viij. question of the Doctour whether the statute of xlv. of Edward the third of Silua cedua, stand in conscience.

## ¶ The lv. Chapiter.

In the xlv. yere of ỹ raigne of king Edwarde the thirde, it was enacted, that a prohibition should lye where a mā is impleaded in ỹ court Cristien, for dismes of woode of the age of xx. yere or aboue, by the name of Silua cedua, how may that statut stand with conscience that is so directly against the libertie of the church, & that is made of such things as the Parliament had no authoritie to make any law of. S. It appeareth in the said statut that it is enacted that a prohibition should lye in that case, as it had bled to do before that time, & if the prohibytion lay by a prescription before the statute, why is not thē the statut good as a cōfirmation of that prescription. D. If there were such a prescription before the statute that prescriptyon was voide, for it prohibiteth the paimēt of tithes of trees of the age of xx. yere or aboue, and paying of tithes is grounded as well vpon the lawe of God, as vpō the law of reason, & against those lawes lyeth no prescription as it is holdē most commonly by al men.

S. That there was such a prescription before ỹ said statut, & ỹ if a man before the said statute had bē sued i ỹ spiritual court for tithe of wood of ỹ age of xx. yere or aboue ỹ phibition lay, as

appeareth in ꝑ ſaid ſtatut, & it cānot be thought
that a ſtatute that is made by auctho̱rity of the
1 Mact: 19:6: whole realme, as wel of ꝑ king & of the Lo̱rdes
ſpirituall & tempo̱rall as of all the cōmons, will
recite a thing againſt the trueth: & furthermo̱re
I cānot ſee how it can be groūded by the laᵂe
of God, o̱r by the law of reaſon that the x. part
ſhould be paid fo̱r tithe & none other po̱rciō but
that, but I thinke that it be grounded vpon the
laᵂe of reaſon that a man ſhould geue a reaſo-
nable po̱rcion of his gᵒdes tēpo̱rall to thē ꝑ mi-
niſter to him things ſpirituall, fo̱r euery man is
boūd to honour God of his ꝑper ſubſtance, and
the geuing of ſuch po̱rciō hath not bē only vſed
amōg faithful people, but alſo amōg vnfaithful
as it appereth Gen. xlvij. where co̱rne was ge-
uē to the pziests in Egipt of cōmō barns. And
S. Paul in his Epiſtles affirmeth ꝑ ſame in
many places, as in his firſt Epiſtle to the Co-
rinth. the ix. chapter where he ſaith, he ꝑ wo̱rk-
eth in ꝑ church. ſhal eate of that that belōgeth
to the church. And in his Epiſtle to the Gala-
thiās the vj. chapter he ſaith, let him that is in
ſtructed in ſpirituall things, depart of his gᵒds
to him that inſtructed him. And S. Luke in
the x. chapter ſaith, that the wo̱rkemā is wo̱r-
thy to haue his hier. All which ſayinges may
right conueniently be taken and applyed to his
purpoſe, the ſpirituall men which myniſter to
the people ſpirituall things, ought fo̱r their mi-
niſtration to haue a competent liuing of them
that they miniſter vnto. But that the x. parte
ſhould be aſſigned fo̱r ſuch a po̱rcion and ney-

ther

ther more nor lesse. I cannot perceiue that that should be grounded by ꝑ lawe of reason, nor immediatly by the lawe of God: for before the lawe written there was no certaine portion assigned for the spirituall ministers, neither ꝑ x. part, nor the xij. part, vnto the time of Iacob, for it appeareth. Gen. xxviij. that Iacob auowed to pay dismes which was amõge the Iewes for the x. part, if our lord prospered him in his iourney, & if the x. part had bē his duety before ꝑ auow, it had bē in vaine to haue auowed it, & so it had if it had ben grounded by the lawe of reasō & as to that is spoken in the Euangelistes, & in the new lawe of tithes, it belõgeth rather to the geuing of tithes in the time of the old lawe, thē of the newe lawe, as appeareth Matheswe xxiij. and Luke xj. where our lord speaketh to the Pharises, saying, wo be to you Pharises that tithe mintes, rue, & herbes, & forget the iudgemēt and the charitie of God, these it behoueth you to do & the other not to omit, ꝑ is to say, it bæhoueth you to dow iustice, & charitie of God, and not to omit paying of tithes though it be of smal things as of mintes, rue, herbes, and such other. And also that ꝑ Pharasey saith. Luke xviij. I paye my tithes of al that I haue, is to be referred to the old lawe not to the time of the newe lawe. Therefore as I take it that ꝑ paying of tithes or of a certain portion to spiritual men for their spiritual ministration to the people hath bene groũded in diuers maners. First before ꝑ lawe written a certaine porciõ sufficient for the spiritual ministers was due to thē by the lawe of na-

nature, which after them that be learned in the
law of the realme is called the law of reason, &
that portion is due by al lawes, and in the law
written, the Iewes were bound to geue the x.
part to their priests as well by the sayde auow
of Iacob, as by the law of God in ỳ old testa-
ment called the Iudicials. And in ỳ new lawe
the paying of the x. parte, is by a lawe that is
made by the church. And the reasō wherefore ỳ
x. part was ordeined by ỳ church to be paid for
the tithe was this. There is no cause why the
people of the new law ought to pay lesse to the
ministers of the new law, thē the people of the
olde testament gaue to the ministers of the old
testamēt. For ỳ people of the new law be bōd
to greater things then ỳ people of the old lawe
were, as it appeareth Math. v. where it is said
vnles your godworkes abōd aboue ỳ workes
of the Scribes & the Pharises, ye may not en-
ter into the kingdome of heauē. And ỳ sacrifice
or the olde law was not so honorable as the sa-
crifice of the newe law, is for the sacrifice of the
old law was onely the figure, and the sacrifice
of the new law is, the thing ỳ is figured, that
was ỳ shadow, this is ỳ trouth. And therfore
the church vpon that reasonable cōsideratiō or-
deined that the x. part should be paid for the su-
stenance of the ministers in the new law, as it
was for the sustenaunce of the ministers in the
old law, & so that law with a cause may be en-
creased or minished to more portiō or to lesse as
shalbe necessary for them. ¶ It appeareth
Genesis xiiij. that Abraham gaue to Melchise-
dech

dech dismes, and that is take to be the x. part & ꝑ was long before the law written, & therefore it is to suppose ꝑ he did that by ꝑ law of God. H. It appeareth not by any scripture that he did ꝑ by the cōmaundement of God, ne by any reuelation. And therfore it is rather to suppose that he did part of duetye, and part of his owne free wil, for in that he gaue ꝑ dismes as a reasonable portion for the sustenāce of Melchisedech and his ministers, he did it by the cōmaūdement of the law of reasō, as before appereth, but that he gaue ꝑ x. part, that was of his free wil, and because he thought it sufficient & reasonable: but if he had thought the xij. part or ꝑ xiij. part had sufficed, he might haue geuen it & that wt good conscience. And so I suppose that in the new law, the geuing of the x. part is by a law of the church, and not by the lawe of God, vnlesse it be taken that the law of the church is the law of god, as it is somtime taken to be, but not appropriatly nor immediatly, for that is taken appropriatly to be ꝑ law of god, that is cōteyned in scripture, ꝑ is to say, in the old testament & in the newe. D. It is somewhat dangerous to say that tithes be groūded onely vpon the law of the churche, for some men as it is said, say that mans law bindeth not in cōscience, & so they might happen to make a boldnes thereby to deny their tythes. H. I trust there be none of that opinion, and if there be it is great pitie. And neuertheles they maye be cōpelled in ꝑ case by the law of ꝑ church to pay their tithes as wel as they should be if paying

of

of tithes were grounded merely vpon the law of God. D. I thinke wel it be as thou saiest & therfore I hold me cõtẽted therin. But I pray the shewe me thy minde in this question, if a whole countrey prescribe to paye no tithes for corn or hey, nor such other, whether thou think that that prescription is good.

S. That question dependeth much vppon that that is said before, for if paying of the x. part be by the law of reason or by the lawe of God, thẽ the prescription is voide, but if it be by the law of man, thẽ it is a good prescription so that the ministers haue a sufficient portion beside. D. Iohn Gerso which was a doctour of diuinitye in a treatise þ he named Regule morales: saieth that dismes be paid to priests by þ law of God S. The wordes þ he speaketh there, of þ matter be these (Solutio decimarum sacerdotibus, est de iure diuino quatenus indefinite tenet: sed quo tam hanc vel illam assignare: aut in alios redditus commutare positiui iuris existit (That is thus much to say, the paying of dismes to priests, is of the lawe of God, that they may thereby be susteyned, but to assigne this portion or that, or to chaunge it to other rents, that is by the lawe positiue, and if it shoulde be taken that by that worde, decimarum, which in Englishe is called dismes or tithes þ he ment the x. part, & that that x. part should be paied for tithe by the lawe of God, then is the sentence that followeth after against that saying, for as it appeareth aboue, the text saith afterward thus, but to assigne this portiõ or that or to chaunge it into other rentes belongeth to

the

the law positiue, that is to the lawe of man, & if the x. part were alligned by God, then may not a lesse part be alligned by the law of man, for ꝑ should be cõtrary to ꝑ law of god, & so it should be voide. And me thinketh that it is not likely ꝑ so famous a clarke wouldе speake any sentence cõtrary to the law of god, or cõtrary to that hee had spoken before, and to proue he ment not by the tme decime, ꝑ dismes should alway be taken for the x. part, it appereth in the iiij. part of his workes in the 32. title littere, where hee saith thus (Non vocatur portio curatis debita, propterea decime: eo quod semper sit decima pars, immo est interdum vicesima aut tricesima.) That in to say, the porcion due to curats, is not therefore called dismes, for that it is alway ꝑ x. part, for sometime it is the xx. or the xxx. part, and so it appeareth ꝑ by this word decimarum, he ment in ꝑ text before rehearsed a certain portion, & not precisely the x. part, and that the portion should bee paied to priestes by ꝑ law of God to sustaine them with, taking as it seemeth the law of reason in that saying, for the law of God as it may one way bee well and conuenientlу taken: because the law of reason is geeuen to euery reasonable creature by God. And then it followeth pursuantly that it belõgeth to the law of man to alligne this portion or that, as necessity shal require for their sustenance, and then his saying agreeth wel to that that is saide before, that is to say, that a certaine portion is due for priestes, for their spiritual ministration by the lawe of reason. And then it wouldе followe thereupon that if

if it were ordeined for a law that al payinge of tithes should from hereforth cease, & that euery curat should haue assigned to him such certaine portion of lande, rent, or annuity, as should be sufficient for him, & for such ministers as should be necessary to bee vnder him, accordinge to the number of the people there, or that euery parishener or housholder shoulde geue a certaine of mony to that vse: I suppose the law were good & ꝑ was the meaning of Iohn Gerson as it semeth in his wordes before rehearsed: where he saith, but to chaunge tithes into other rents is by the law positiue (ꝑ is to say) by the lawe of man. And some thinke that if a whole countrey prescribe to bee quite of both tithes of corne, or grasse, so ꝑ the spirituall ministers haue a sufficient portiõ beside to liue vpõ, ꝑ is a good ꝓscription & ꝑ they should not offẽd, that in such countries paid no tithes: for it were hard to say, that al ꝑ mẽ of Italy, or of ꝑ East parties bee dampned because thei pay no tithes, but a certain portion after ꝑ custom: therfore certein it is to pay such a certaine portion, as wel they as al other be bound, if the church aske it, any custome notwithstandinge. But if ꝑ Church aske it not, it semeth that by ꝑ not asking, the church remytteth it, & an example thereof we may take of the apostel Paul, that though he might haue taken his necessary liuing of thẽ that hee preached to, yet hee toke it not, and neuertheles they ꝑ gaue it him not, did not offẽd, because he did not aske it, but if one man in a towne would prescribe to be discharged of tithes, of corne & grasse, me thi-

nketh

seth ꝑ ꝓscripcion is not, good vnles he cā ꝓue ꝑ he recōpēseth it in an other thig, for it semeth not reasonable ꝑ he should pay lesse for his tithes then his neighbours doe, seeing ꝑ the spirituall ministers are bound to take almuch diligence for it, as thei be for any other of ꝑ parish, wherfore it might stand w reason ꝑ he should be cōpelled to pay his tithes as his neighbors doe, vnles he can ꝓue ꝑ he paieth in recōpence thereof more thē the x. part in an other thing. Neuertheles I leaue ꝑ matt to ꝑ iudgement of other, & thē for a further ꝓfe though ꝑ said ꝓscripcion of not paying tithes for trees of xx. yere & aboue, were not good, yet ꝑ ꝑ of corne & grasse should be good, she make this reasō: they say ꝑ there is no tithe but it is either a ꝓdial tith, a psonal tith, or a mixt tith, & they say ꝑ if a tith should be paid of trees whē thei be so sold, ꝑ that tith were not a ꝓdial tithe, for ꝑ ꝓdial tithe of trees is of such trees as bring forth fruits and encrease yerely, as appell trees, nut trees, peare trees, & such other, wherof ꝑ ꝓdial tithe is the appels, nuts, peares, & such other fruits as cōe of thē yerely, & whē the fruits be tithed, if the owner after sel ꝑ trees, there is no tith due thereby, for ij. tiths may not be paid of one thing, & of those tithes ꝑ is to say, of ꝓdial tithes was ꝑ cōmaundmēt geuen in ꝑ old law to the Iewes, as appeareth Leuitic. xxvij. where it is saide (Omnes decime terre, siue de pomis arborum: siue de frugibus, domini sunt: & illi sanctificantur) that is to say, al tithes of ꝑ earth, either of appels of trees, or of grains be our Lordes, and to him they bee sanctified,

and

and though ꝑ ſaid law ſpeaketh onely of appels yet it is vnderſtand of al maner of fruites. And becauſe it ſaith that al the tithes of the earth is our lords, therefore calues, lambs, & ſuch other muſt alſo be tithed, & they be called by ſome mẽ prædial tithes, that is to ſay, tithes ꝑ cõe of the grounde, howbeit they cal the only prædials mediate, & they be the ſame tithes ꝑ in this writig be called mixt tithes, & the other tithes (that is to ſay) tithes of appels, & corne, & ſuch other be called prædialles immediate, for they come immediatly of the grounde, and ſo do not mixt tithes, as euidently appeareth.

D. But what thinkeſt thou ſhalbe the prædiall tithes of aſſhes, elmes, ſalowes, alders, & ſuch other trees as beare no fruits, wherof any profit cõmeth, why ſhal not the x. part of the ſelfe thing be the tithe thereof if thei be cut downe as wel as it is of corne, & graſſe?

S. For I thinke that there is to that intent great diuerſity betwene corne, graſſe, & trees, and that for diuers cõſiderations, whereof one is this. The propry of corne, & graſſe is not to growe ouer one yere, & if it doe: it wil periſh & come to nought, & ſo the cutting downe of it, is ꝑ perfection and preſeruation thereof, & the ſpecial cauſe that any encreaſe followeth of the ſame. And therefore the tenth part of the encreaſe ſhalbe payed as a prædiall tithe, and there no ꝓduction ſhalbe made for the charges of it, and ſo it is of ſheep and beaſtes that muſt bee taken and killed in tyme, for elſe they may periſh and come to naught: but when trees be felled: that fellings

is

is not the perfection of ꝑ trees, ne it causeth not them to encrease but to decay, for most cõmonly the trees would be better if they might growe stil. And therfore vpon that that is the cause of the decay & distruction of them, it seemeth there can no prædial tithe arise, and some mẽ say that this was the cause why our Lord in the sayde thapter of Leuitic. xxvij. gaue no commaundement to tithe the trees, but the fruits of ꝑ trees onely. W. It appeareth in Paralipo xxxj. that the Iewes in the time of ꝑ king Ezechias, offred in the temple all thinges that the grounde brought forth, and that was trees as well as corne and grasse.

S. It appeareth not that they did that by the commaundement of god, and therefore it is like that they did it of their owne deuotion and of a fauour that they had aboue their duety, to ꝑ repairing of ꝑ temple, which the kinge Ezechias had then commaunded to bee repaired, & so that text proueth nothing that tithe should be paide for trees, and therefore they say farther, that truth it is, that if a man to the intent he would pay no tithe, would wilfully suffer his corne, & grasse to stand still and perish, he should offende cõscience thereby, but though he suffer his trees to stand stil cõtinually without felling, because he thinketh a tithe would bee asked if hee felled them (so that he do it not of an euil will of the curate) he offẽdeth not in cõscience, ne he is not bounde to restitution therefore, as he should be if it were of corne, and grasse as before appereth. And an other diuersity is this: In this case of

tithe wood, that tith therof would serue so lit-
tle to that purpose that tithes be paied for, that
it is not likely that they that made the law for
paiment of tithes entended that any tith should
be paied for Trees or woode, for spirituall my-
nisters must of necessity spend daily and weke-
ly, & therefore the tithes of trees or wood that
commeth so seldome would serue so litle to the
purpose that it should be paid for, that it would
not helpe them in their necessity, so that if they
should be driuen to trust therto though it might
help him in whose time it should happen to fal,
yet it shoulde deceiue them that trusted to it in
the meane time, and also shoulde leaue the pa-
rish without any to mynister to them. D. I
woulde well agree that for Trees that beare
fruit their should no predial tithe be paid when
they bee solde, for the predial tith of them is the
fruites that come of them, & so there cannot be
two predialles of one thinge as thou hast said.
But of other trees that beare no fruit, me think-
eth ꝑ a predial tithe should be paid when they
be solde, and so it appeareth that there ought to
bee by the constitution prouincial, made by the
reuerend Father in God Robert Winchelse late
Archbishop of Canterbury, where it is sayde
declared ꝑ (silua cedua) is of euery kinde of trees
that haue being, in that that they should be cut
or that be able to be cut, whereof we will saith
hee, that the possessour of the sayde woodes be
compelled by the cẽsures of the Church to pay
to the parishe church, or mother church ꝑ tithe
as a reall or predial tith & so by vertue of ꝑ cõ-
stitu-

ſtitution prouincial, a predial tith muſt be paied of ſuch trees as haue no fruit, for I would weil agree that the ſaid cõſtitution prouincial ſtretched not to trees that beare fruites, though the words bee generall for al trees, as before appeareth. S. I take not the reaſon why a predial tithe ſhould not be paide for trees ꝑ beare fruite to bee becauſe two predial tythes cannot bee paide for one thing, for when the tithe is payde of Lambes, yet ſhal tithe bee paide of woolle of the ſame ſhepe, for it is paid for an other increſe and ſo it might be ſaid that the fruit of a tree is one increaſe, & the felling an other, but I take ꝑ cauſe to bee for ꝑ two cauſes before rehearſed, & alſo for aſmuch as ꝑ fellinge is not properly an increaſe of ꝑ trees, but a deſtruction of the trees as it is ſaid before. And farther I would heare thy minde vpon the ſaid cõſtitution prouincial which wil that tith ſhould be paide for trees by the poſſeſſours of the wode, that if the poſſeſſour ſell the wood for C. li. and geeue the buyer a certaine time to fell it in, what tithe ſhall the poſſeſſour pay as long as the wode ſtandeth. D. I think none for the predial tithe commeth not til the wode be felled, and a perſonall tithe hee cannot pay, no more then if a manne plucke downe his houſe and ſelleth it, or if he ſel al his land, in which caſes I agree well hee ſhall pay no tithe neither perſonal nor predial. S. And then I put caſe that the buier ſelleth ꝑ wood againe as it is ſtanding vpon the grounde to another for CC. li. what tithe ſhalbe paid then. D. thẽ ꝑ firſt buier ſhal pay tithe of ꝑ ſurpluſage ꝑ

he taketh ouer the C.li. that he payde as a perſonall tithe. S. And then if the ſeconde buyer after that cut it downe, and ſel it when it is cut downe for leſſe then hee paide, what tythe ſhall then be paide.

D. Then ſhal he that ſelleth them pay the tithe for the trees, as a predial tithe.

S. I cannot ſee how that can be, for he neither hath the trees that the predial tithe ſhould bee payde for, if any ought to bee payed, nor hee is not poſſeſſour of the grounde where the trees grow, and therefore if any predial tithes ſhould bee paide, it ſhould bee paide eyther by the firſte poſſeſſour, by reaſon of the wordes of the ſayd cõſtitution prouincial, which be ỳ the tithe ſhal be paide by the poſſeſſour of the wode, or by the laſt buier, becauſe he hath the trees ỳ ſhould be tithed, & by the firſt poſſeſſour the tithe cannot be paide as a predial, for he cut not them downe, ne they were not cut downe vpon his bargaine, and by the laſt buyer it cannot be paide neither as a predial tithe, for the ſaid cõſtitution ſaith, that the poſſeſſoures of the woods ſhould be cõpelled to pay it. And therefore I ſuppoſe that ỳ truth is that in that caſe no tithe ſhalbe paide, for as to the laſt ſeller he ſhall pay no perſonall tithe, for he gained nothing as it appeareth before, & no predial tithe ſhalbe paide, for it ſhould be againſt the ſaide preſcription, & alſo the cutting downe is the deſtruction of trees, and not their preſeruation as is ſaid before.

D. Then takeſt thou the ſaid cõſtitution to be of ſmale effect as it ſeemeth.

S. I take

I take it to be of this effect that of wood aboue twenty yere it bindeth not, because it is cōtrarye to the common lawe & to the said prescription that standeth good in the cōmon lawe, but of woode vnder xx. yere, whereof tith hath bene accustomed to be paide, the constitution is not against the said prescription, because paying of tithe vnder twenty yeare, is not prohibite but suffered by the said statute, howbeit some say that by the very rigour of y cōmon law, tithes shoulde not be paied for wood vnder xx. yere no more then for aboue twenty yeres, & that prohibition in that cāse lieth by the cōmon law: neuertheless because it hath ben suffered to y cōtrary and that in many places tith hath be paid thereof: I passe it ouer, but where tithe hath not bene paid of wood vnder xx. yeare I thinke none ought to be paide at this day in lawe nor conscience, but admit it that y said constitution taketh effect for payment of the wood vnder xx. yere as of a predial tithe, yet I cannot see howe the tithe thereof should be paied by the possessour of the wood if he let the, but rather should be paid rather by him that hath the trees, for y constitution is, that the tithe shalbe paid as a veall as a prediall tithe, and that is the x. parte of the same tree as it is of corne, and if a man sow corne vpon the ground, the buyer shall pay the tithe and not the seller, & so it should seeme to be here, and what the constitution ment to decree the lōner kno we in this parte I can not tell, but this thinge were to endice the ouerseers [illegible] tithes of great trees when they

sel thē to their owne dse which mee thinketh shoulde be very hard to proue to stand w reaso, though the said statut had neuer ben made as I haue saide before. And furthermore I would here vnder correctiō moue one thig, & y is this, y as it seweth they y were at the making of y said constitution that knew the said prescriptiō did not followe the direct order of charitye therein so perfectly as they might haue done, for when they made the saide constitution prouincial, directly against the sayde prescription, they set a lawe against custome, and power against power, and in maner the spiritualtie against the temporalty, wherby they might wel know, that great variāce & suit should follow, & therefore if they had clerely seue that the said prescription had bene against conscience they should first haue moued the king and his counsell & the nobles of the realme to haue assented to the reformatiō of that prescriptiō, & not to make a lawe as it were by auctoritie & power against y prescription & then to threat the people & make the beleue that they were all accursed that kept the said prescriptiō, as y maintein it, & it seweth to stand hardly with conscience to report so many to stand accursed for fulfilling of the said statut and of the said prescriptiō as there do, and yet to do no more then hath ben done to bring them out of it. M. Aye thinketh that it is not conuenient, y lay men shoulde argue the lawes & the decrees or constitutions of the church, & therefore it were better for them to geue credence to spirituall rulers that haue

curt

ture of their soules, then to trust to their owne opinions, & if they woulde do so, then such matters shoulde muche the more rather ceale then they will do by such reasoninges. S. In that that belongeth to the articles of the fayth, I thinke the people be bound to beleue the church, for the Church gathered together in the holye ghost cannot erre in such thinges as belong to the Catholike faith, but where the Churche make any lawes whereby the goodes or possessions of the people may be bounde, or by thys occasion or that may be taken frō thē, there the people may lawfully reason, whether ỳ lawes bindeth them or not, for in such lawes ỳ Church may erre and be deceiued, and deceiue other either for singularitie or for couetice or some other cause and for that consideration it pertayneth most to them that be lerned in the law of the Realme to know such lawes of the church as treat of the ordering of lands or goodes, and to see whether they may stande with the lawes of the realme or not, and therefore it is necessary for thē to know the laws of the church, that treat of tithes, of executours of testaments, of legacies, bastardy, matrimony, and diuers other wherein they be bounde to know when the law of the church must be followed, & when ỳ lawe of the realme, wherof because it is not our purpose to treat, I leaue to speake any more at this time, and wil retorte againe to speake of tithes, wherin see mē say ỳ of Tin, Cole, & Lede, no tith should be paid whē they be sold by ỳ owner of ỳ groūd, because it is part of the inheritāce,

and it is more rather a destruction of ỹ inheritance then an encrease: and therefore they say that if a man take a tynne worke, & geue the Lord the tenth dishe according to the custome that the Lorde shal pay no tithes of that tenth dish neither predial nor personal, but if ỹ other that taketh the worke haue gaines & aduauntage by the worke, it seemeth that it were not against reason that he should pay a psonal tith of his gaines the charges deducted.

D. I pray thee shewe me first what thou takest for a personal tithe and vpon what ground parsonal tithes be paid as thou thinkest, so that one of vs mistake not another therein.

S. I will with good wil, and therefore thou shalt vnderstand that as I take it: parsonal tithes be not paid for any encrease of the grouñd, but for such profitte as commeth by the labour or industrie of the parsõ, as by buying and selling and such other, and such personall tithes as I take it, must be ordered after the custome, and the church hath not vsed to leuy those tythes of compulsion, but by cõscience of the parties, neuertheless Raymond saith ỹ it is good to pay parsonal tithes or with the assent of the parson, to distribute them to poore men, or els to pay a certaine portion for the whole, but as Innocent saith, where ỹ custome is that they should be paid the people be bound to pay them as wel as prediales, ỹ expences deducted, howbeit in ỹ church of England they vse to sue for such parsonal thithes as well as for prediales & that is by reason of ỹ constitution prouincial

that

that was made by Robert Wyncheley late Archbishop of Canterbury, by ꝑ which it was ordeined that personal tithes should be paied of craftes and marchendile, and of ꝑ lucre of buying and selling, and in likewise of carpenters, Smythes, weauers, Maylons, and all other ꝑ swoorke for hire that they shal pay tithes of their hire except they will giue any thing certaine to the vse or to the lyght of the Churche, if it so please the persone, & in an other place the sayde Archebishoppe saieth, that of the pasturage of woodes and such other thinges &c. and of fyshinges, trees, bees, doues, and of diuers other thinkes there remembred, and of crafts, and of buying & selling of the profites of diuers other thinges there recited, euery man shoulde helpe suffisie competently to the church, to the which they be bound to geue it of right, no exemcion by ꝑ geuing of the said tithes debated or withholden but only for the payement of tithes of craftes & of buying & selling, & by reason of the said constitutions prouinciales sometyme suits be taken in the spirituall court for personall tithes and thereof many me do complaine, because deductions many times must be referred to the conscience of the parties. And they marueile also why a lawe should be made in this Realme for paying of personal tithe more then there is in other countries. And here I shoulde gladly more thee farther in one thinge concerninge such personal tithes to knowe thy mynd therein and that is, if a man geue to another a house & he selleth that house for a certaine sume, shall

her

he pay any tith of that ſumme. D. what thinkeſt thou therein. S. I thinke that he ſhal pay no tithe, for there as I take it the profite commeth not to him by his own induſtry, but by ꝑ gift of an other, & as I take it perſonall tithes bee not paide for euery profite or aduauntage that commeth newly to a man, except it come by his owne induſtry or labour, and ſo it doeth not here. And alſo if he ſhould pay tithe of that he ſold the houſe for: he ſhould pay tithe for the very whole value of the thing. And as I take it: the perſonal tithes for buyinge and ſellinge ſhall neuer bee paide for the value of the thinge but for the cleare gaines of the thinge, & therefore I take the caſes before rehearſed, where a man ſelleth his land, or pulleth downe a houſe & ſelleth the ſtuffe, that he ſhoulde there pay no tithe, that it is there to be vnderſtande that he hath that lande or houſe by gifte or by diſcent, for if a man buy lande, or buy timber & ſtuffe of a houſe and ſel it for a gain, I ſuppoſe that he ſhould pay a perſonall tithe for that gaine, and this caſe is not like to a fee or annuity graũted for coũſaile, where the whole fee ſhal be tithed, for the charges deduct or ſome certaine ſumme by agreement, for there the whole fee commeth for his counſaile which is by his own induſtrie. But in the other caſe it is not ſo, and the ſame reaſon as for the perſonal tithe might be made of trees when they diſcend or be geuen to any man and he ſelleth them to another that he ſhal pay no perſonal tithe. D. Me thinketh ꝑ if the houſe amend in his keping, & then he ſel

the

the hoꝛse, that then the tithe shalbe paid of that ꝑ the hoꝛse hath encreased in value after ꝑ gyft & so it may be of trees ꝑ he shal pay tith of that, that the trees may be amended after the gift oꝛ discent. S. Then the tith must be the x. parte of the encrease the expẽces deduct, & thẽ of trees the charges must also be deduct, foꝛ it is then a psonal tithe, & there is no tree that is so much woꝛth as it hath hurt ꝑ grou̅d by the growing therefoꝛe there cā no psonal tith be paide by the owner of the grou̅d when he selleth thẽ, though they haue encreased in this time. Neuertheles I wil speake no farther of that matter at thys time, but wil shew thee ꝑ if Tinne, Lede, cole, oꝛ trees be sold, ꝑ a mixt tith cānot growe therby, foꝛ a mixt tith is ꝑperly of Calues, Lābes, pigges, & such other that come part of ꝑ grou̅d that they be fed of, & part of ꝑ keeping, industry and ouerlight of the owners as it is sayde beꝛe, but Tinne, Lede, and Cole are part of the grou̅d and of the free holde, and trees growe of themselues, & be also annexed to the freehold & will growe of themselues, & also the mixt tithe must be paied yerely at certaine times appointed by the law oꝛ by custome of ꝑ countrey, but it may happen that Tinne, Lede, Cole, & trees shal not be selled noꝛ take̅ in many yeres, & so it semeth it cannot be any mixt tithes, & these be some of ꝑ reasons which they that would maintaine that statute and preiscription to be good, make, to proue their intent as they thinke. D. What thinke they if a mā sel the trees of his wood, whether any tithe ought there to be paide

S.

S. They thinke al one law of the trees and of the loppes.

D. And if hee vse to fell the loppes once in xij. or xx. yeare, what hold they then. S. That is all one. D. And what is their reason why tithe ought not to be paide there as well as for wood vnder xx. yeare. S. For they say that the loppes are to be taken of the same condition as the trees be, what time so euer they be felled and that no custome wil serue in ỳ case against the statute, no more then it shoulde doe of great trees. D. And what holde they of the barke of the trees? S. Therein I haue not heard their opinions, but it seemeth to be one lawe in the loppes. D. I perceiue well by that thou hast said before, ỳ thy minde is that if a whole countrey prescribe to be quite of tithes, of trees corne, & grasse, or of any other tithes, that that prescription is good, so that the spirituall ministers haue sufficient beside to liue vpon, doest thou not meane so? S. Yes verely.

D. And then I would know thy mind if any man contrary to that prescription were sued in the spirituall court for corne & grasse, or any other tithes whether a prohibition shoulde lye in that case as it did after thy minde before the said statute, where a man was sued in the spirituall court for tithe wood.

S. I thinke nay. D. And why not there as well as it did where a mã was sued for the tithe wode. S. For as I take it, there is great difference betwene the cases & ỳ for thys cause there is a doubte, in ỳ lawe of England ỳ

if any

if any ſuite be taken in ꝑ ſpiritual court, where by any goods or landes might bee recouered, which after the grouds of ꝑ lawe of the realme ought not to be ſued there, though percaſe the kings court ſhal hold no ple thereof, that yet a prohibition ſhoulde lie, and after when it hadde cõtinued long that no tithes were paid of wood becauſe of ꝑ ſaide prohibition, and that after by proceſſe of time ſome curats beganne to aſke tithes of wood contrary to the lawe and contrary to the ſaid preſcription, ſo that variaunce began to riſe betwen curats and there pariſhners in that behalfe, thē for appeaſing of the ſaid varaunce, the ſaid ſtatute was made, and that as it ſeemeth more at the calling on of ꝑ ſpiritualty then of temporalty, for the ſtatute doth not expreſſely graunt that the prohibition in ꝑ caſe of tith woode ſhould lye ſo largely as ſome ſaye it lay by the law, how be it, it doth not reſtraun the common lawe therein, as it appeareth euydently by the wordes of the ſtatute, and ſo after ſome men it appereth before the ſtatute, and alſo after the ſtatute, as I haue touched beefore that ꝑ ſpiritual court ought not in that caſe to haue made any proceſſe for tithe wood: & therefore if they did, a prohibition lay by the commō lawe: & like law is if the ſpiritual courte make proceſſe vpon ſuch a legacy, as by the law of the realme is voyde. As if a man bequeth to one, an other mans horſe, and the ſpirituall courte thereupon maketh proceſſe to execute that legacy, there a prohibition lyeth, for it appeareth euidētly in ꝑ libel, if all the truth appeare in the

libel

libel that in the law of the Realme, the legacy is voide to all intentes. And that he to whom the legacy is made, shall neither haue the horse, nor the value of the horse. And in like wise if a man sel his land for C.li. and he is sued after in the spiritual court for tythe of the saide C.li. There a prohibition shal lie, for it appeareth in that case openly in the libel, that no tith ought to be paid, and that the spiritual law ought not in that case to make any procesle, whereby the goods of him that solde the lande might bee taken frō him against the law of the Realme, and vpon this grounde it is, that if a man were sued in the spiritual court nowe sith the statute, for a mortuarie that a prohibition should lie, for it appereth in the libel, that sith the statute there ought no suite to bee taken for mortuaries, and ỳ same law is if any suit were taken in the spiritual court for a newe duety ỳ is of late taken in some places vpon leases of personages, and vycarages, which is called a dymission noble, for it appeareth evidently in the libel, if anyy bee made therupō ỳ no such procesle ought by ỳ law of the realme to be made in that behalfe, but in the case of tithe corne, or grasle, or such other things, wherein thou hast desired to knowe my minde, there appeareth nothing in the libel, but that the suite thereof of right appertaineth to ỳ spiritual law, and so for any thinge that appeareth, the party may bee holpen in the spiritual court by the prescription, and if ỳ case were so far put, ỳ in the spiritual court they would not allow the said prescription, yet I thinke no ỳ-

hibi-

hibition ſhould lie, for though ꝑ ſpiritual iudges in a ſpiritual matt deny the parties of iuſtice, yet the kinges lawes cannot reforme that, but muſt remit it to their cõſcience. But if ther were ſome remedy prouided in that caſe it were well done, for ſome ſaye that in the ſpirituall court thei wil admit no ple againſt tithes. And alſo if a compoſition were made by aſſent of the patrone and alſo of ꝑ ordinary betwene a parſõ and one of his pariſhners, that ꝑ perſon and his ſucceſſoues ſhould haue for a certaine grounde ſo many quarters of corne for his tithe yerely, & after contrary to the compoſition the perſon in the ſpiritual courte aſketh ꝑ tithes as they fal, that in this caſe no ꝓhibition ſhould lie, ne yet though the caſe were further put ꝑ the compoſition were pleaded in the court and were diſalowed, but al reſteth in the cõſcience of ꝑ Iudges ſpiritual as is ſaid before, howbeit, becauſe ſome be of opinion ꝑ a ꝓhibition ſhould lie in this laſt caſe, wherefore I will referre it to the iudgement of other, but in the caſe of the preſcription before rehearſed, I take it for ꝑ clearer caſe, that no ꝓhibition ſhal lie, as I haue ſaid before. And I beſeech our Lorde that this matt & ſuch other like thereto, may tee ſo charitably loked vpon, that there be not hereafter ſuch diuiſions, ne ſuch diuerſities of oppinions therein as hath beene in time paſte, whereby hath followed great coſtes and charges to many perſons in this Realme, and that hath moued mee to ſpeake ſo farre in thys Chapter, and in diuers other Chapters of this preſent

booke

booke as I haue done, not intending thereby to geue occasion to any person to withold his tithes that of right ought to be paid, ne to alter ỹ portion therein before accustomed, but that as mee thinketh they ought to be claimed by ỹ same title as they ought to be paide, & by none other, & that it may also somwhat appeare, that ỹ sayde statute of xlv. of Edward the third was well & lawfully made, & vppon a good reasonable consideration, & that ỹ laid prescription is good also so that no man was in any daunger of excõmunication for the making of the saide statute, nor yet is not for the obseruing thereof, ne yet of ỹ said prescription as it is noted by some persons that there should bee. And thus I cõmit thee vnto our Lord, who euer haue both thee & mee in his blessed keeping euerlastingly. Amen.

Finis.

Here endeth the second dialogue in English with newe Additions, betwixte a Doctor, and a Student in the lawes of England. And here after followeth the Table.

¶ Hereafter followeth the table to the first Booke with certaine additions newly added thereto, and ouer all the chapters & questions which bee newly added, ye shall finde entituled this word Addition, both in the table, & also in the booke.


The introduction
Of the law eternall — Cap. 1
Of the lawe of reason, the which by Doctours is called the lawe of nature of reasonable creatures. Cap. 2
Of the law of God — cap. 3
Of the law of man — cap. 4
Of ỹ first grounde of the law of England in ỹ Addition — ca. 5
Of the ij. ground of the law of England — ca. 6
Of the .3. ground of the law of England — ca. 7
Of the 4. ground of the law of England — ca. 8
Of diuers cases wherein the student doubteth whether they be only maxymes of ỹ law, or that they be grounded vpon the law of reason — ca. 9
Of the .v. ground of the law of England — ca. 10
Of the vj. ground of the law of England — ca. 11
The first question of the Doctor, of the lawe of England and conscience — cap. 12
What Sinderesis is — cap. 13
Of reason — cap. 14
Of conscience — cap. 15
What is equity — cap. 16
In what maner a man shalbe holpē by equities in

In the lawes of England cap. 17
whether the statute hereafter rehearsed by the Doctor be against conscience or not cap. 18
Of what law this question is to be understand, that is to say where conscience shalbe ruled after the lawe cap. 19
Addition
Addition
Of diuers cases where conscience is to bee ordered after the law cap. 20
Addition
The first question of the Student cap. 21
The 2. question of the student cap. 22
The 3. question of the student cap. 23
The 4. question of the student cap. 24
The 5. question of the student cap. 25
A question made by the D. how certaine recoueries ought to be vsed in the kings courtes to defeate tayled land, may stand with cõscience cap. 26
The first question of the Student, concerning tailed landes cap. 27
The 2. question of the student concerning tayled lands cap. 28
The 3. question of the student cõcerning tailed landes cap. 29
The 4. question of the student concerning recoueries of inheritance entailed cap. 30
The 5. question of the student cõcerning tailed lands cap. 31
The 6. question of the student concerning tailed landes cap. 32
Addition

¶ The ende of the table to the first Booke.

¶Here beginneth the Table to the seconde Booke.

The Introduction

The first question of the student whether the tenant in taile after possibility of issue extinct, may with conscience do waste. Chapter. i.

What is vnderstande by this terme when it is said, thus it was at the common law. chap. ii.

The iij. question of the student whether the goodes of men outlawed be forfeit in conscience as they be by the law. chap. iij.

The iiij. question of the student, Is of waste done by a straunger in lands that be in the handes of particuler tenants &c. chap. iiij.

The iij. question of the student whether a man may in conscience be of counsell against him that he knoweth is the heire of right, but he is certified bastard by the ordinary. chap. v.

The vj. question of the student whether a man may in conscience bee of counsell with a man at the comon law knowing y^e he hath sufficient matter to be discharged in the Chauncery that he may not plede at the common law. chap. vj.

The vij. question of the student, whether a man may with conscience be of counsel against y^e feoffee of trust in an action of trespas y^e he bringeth against his feoffour of trust for taking the profites. chap. vij.

The viij. question of the student if a mā that by way of distres cōmeth to his dett, but he ought not to haue distreined for it, what restitucō he is bound to make. chap. viij.

For what thig a mā may lawfully distrein.

The viij. question of the studēt whether executors be bound in cōsciēce to make restitution for a trespas done by the testatour, & whether they be bound to pay debts vppon a contract first, or make the said restitution. chap. 10.

Their question of the studēt, whether hee that hath goods deliuered him by force of a legacye be bound in conscience to pay a debt vpon a contract that the testatour ought if the executors haue none other goods in their handes. chap. 11.

The x. question of the studēt if a man haue issue two sonnes and died seysed of certain landes in fee, the eldest dieth without issue, ỳ yōgest recouereth by assise of Mortdaūcester the lād, with damages frō ỳ death of ỳ father, whether there he be bound in cōsciēce to pay the damages to the executors of the eldest brother for the tyme retayned. chap. 12.

The xj. question of the student what dāmages he ought in order and conscience to restore, where her husband died not seised, but she demaunded dower and was denied. chap. 13.

The xij. question of the student if a mā knowing another to haue right to his land causeth a fine & proclamation to be leuied according to the statute, & he ỳ hath right maketh no claime within ỳ yeres, whether he be barred in conscience as he is in the lawe. chap. 14.

The xiij. question of the studēt if a man ỳ hath had a childe by his wife dyed in time to haue possession of his wyues landes, & she dieth or he can haue it, whether in conscience he shall be tenant by the curtesy. chap. 15.

The xiiij. question of the studēt, if the grantour of

ſa rēt enfeoffe the grauntee of the rēt of part of
the lād &c. whether the whole rent be extinct in
conſcience as it is in the law. chap. 16.
The xv. queſtiō of the ſtudent, if he that hath a
rēt out of two acres be named in a recouery of
the one acre he not knowing therof &c. whether
the whole rēt be extinct in cōſcience &c. cap. 17.
The xvj. queſtion of the ſtudēt, if a man haue a
villeine for terme of life & the villaine purcha-
eth lands in fee & he that hath the villein dyeth,
whether he may with cōſcience kepe the lands
to him & to his heirs as he may by the law. ca. 18.
The xvij. queſtion of the ſtudēt if a man in the
ple next before entryme him that is in the reuerſiō
of the villein that after the death of the villeine
he hath right to the lande & counſaileth him to
ſue wherin his great ſuit & charges ſolow, what
daūger it is to him that gaue the cōſel. ca. 19.
The xviij. queſtiō of the ſtudēt is vpon a ſeffe-
ment made vpon cōdition that the feoffee ſhall pay
rēt to a ſtraūger, how the feoffement ſhall ſtay
in law & conſcience chap. 20.
The xix. queſtion of the ſtudēt is vpon a feoffe-
ment in fee, & it is agreed that the feoffee ſhall pay
rent to a ſtraūger, how the feoffement ſhall ſtay
in law and conſcience. chap. 21
How vſes in land began & by what lawe, & the
cauſe why ſo much land is put in vſe. chap. 22.
The diuerſities betweene theſe caſes, whereof
one is put in the xx. chapter & the other in the
xxi. chapter of this preſent booke. chap. 23.
What is a nude contracte or a naked promiſe
after the lawes of England, and whether any
action may lye therevpon. chap. 24.

The xx. queſtion of the ſtudent if a man ꝑ hath two ſonnes one before eſpouſels, & the other after eſpouſels, by his will bequetheth to his ſonne & heire al his goodes, which of the ſonnes ſhall haue his goods in conſcience. cha.
Whether an Abbot may with conſcience preſent to an aduowſon of the church that belonged to the houſe without aſſēt of the conuent, chap.
If a man vnder deaths in his cōme doing hurt whether he may by his owne authority take the ſame againe til he be ſatiſfied for ꝑ hurt. ca.
whether a gift made by one vnder the age of xxi. yere be good. chap.
If a man be cōuict of hereſy before the ordinary whether his goodes be forfaite. chap.
Where diuis patrōs be of an aduowſon, & church voideth, the patrōs vary in their preſentmēt whether the biſhop ſhal haue liberty to preſent which of the incūbents that he will. chap.
How long time the patrō ſhall haue to preſent to a benefice. chap.
If a man de excōmēged whether he may in any caſe be abſolued vpon making ſatiſfaction cap.
Whether a prelate may refuſe a legacy. cap.
whether a gift made vnder a condition be void if the ſouereigne only breke the condition. ca.
Whether a ſouerain made vpō a gift to ꝑ church that it ſhal not be altered, be good chap.
If the patron preſent not within vj. monethes who ſhal preſent. chap.
Whether the preſentment & collation of all benefices and dignities voiding at Rome belong onely to the Pope. chap.
If a houſe by chaunce fall vpon a horſe that

lowed who shal beare the losse
of a priest haue wonne much money by saying
shalt, whether hee may geeue those gooddes or
make a will of them cap. 39
who shal succeede to a clarke ỳ dieth intestate.
Addition cap. 40
If a man be outlawed of felony, or be attainted
of murther or felony, or thus is an Appeale may
may be slaine by euery stranger cap. 41
Addition
whether a man shalbe bound by the act or offence
of his seruant or officer cap. 42
Addition
whether a villaine or a bondman may geeue or
alien his goodes cap. 43
If a clark be promoted to ỳ title of his patrimony
or a lay fellow his patrimony & falleth to an-
other, whether he shal haue his tyt' therin cap. 44
Diuers questions taken out by a student of the
Summes called Summa rosella, & Summa angel-
lica which me thinketh are needfull for to be learne
how they stand and agree with the lawes of the
realme cap. 45
Where ignorance of ỳ lawe excuseth in the lawes
of England & where not cha. 46
Certaine cases and grounds where ignorance of
the deede excuseth in ỳ lawes of Englande and
where not cha. 47
Addition
The 1. question of ỳ D. how the lawe of Englād
may be said reasonable ỳ prohibiteth &c. cha. 48
The 2. question of ỳ D. whether ỳ warranty of
the yonger brother ỳ is taken as heire because
it is

it is not knowē but ꝑ theldest brother is dead be in cōscience a barre to the eldest brother as it is in the law cha.

The 3. question of ꝑ D. whether if a man procure a collaterall warranty to extinct a right he knoweth another man hath, to land, be a bar in conscience, as it is in the law cha.

The 4. question of the Doctor of wrytte of tenan chap.

The 5. question of ꝑ D. whether it stand with conscience to prohibite a Jurie of meate & drinke tyll they be agreed of their verdict cha.

The 6. question of ꝑ D. is whether ꝑ colours & generall of the cōmon law in actions, actions of trespas, and diuers other actions, stand with conscience, wedanie they be most cōmonly found and not true cha.

Prohibition

The 7. question of ꝑ Doctor, wherby the pleading in actiōs whereby the tenaunts vse sometime to plead in such maner that they shall confesse no matter cha.

The 8. question of the D. how the statute that was made in ꝑ parlyament of king Edwarde the third concerning the tithe of woode may stande with conscience cha.

FINIS.

¶ Londini in Aedibus Richardi Tottelli Anno 1580.